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Supreme Court, U.S.
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2002

GOYA FOODS, INC., v. ULPIANO UNANUE-CASAL a/k/a/ CHARLES UNANUE, LILIANE UNANUE AND KALIF TRADING, INC.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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September 3, 2002

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QUESTIONS PRESENTED

This case implicates the vital precept of preserving the public confidence in the administration of justice by assuring that the highest standards of the appearance of impartiality be maintained. The manner in which a district court wields its contempt power is a process fraught with potential for misuse, and requires vigilant oversight by all higher courts. In this matter, the conduct of the district court in its application of that power calls for the exercise of this Court's supervisory and regulatory powers in light of questions presented.

1. Whether the District Court had subject matter jurisdiction without the New Jersey judgment against Charles Unanue ("Charles") ever having been validated in the required *exequatur* proceeding in the Superior Court of Puerto Rico, without which validation it also could not have had force and effect, been used in any manner or acquired personal jurisdiction over Charles who did not have minimal contacts with Puerto Rico?

2. Whether the First Circuit, given the absence of jurisdiction below had any power or authority other than to dismiss the case?

3. Whether the district court transgressed the acceptable bounds for preserving the appearance of impartiality when it sought to hold Petitioner in contempt for alleged acts legally performed by another, and in doing so denied the Petitioner the procedural safeguards required for due process and prejudged the outcome even though all of the proofs before the court established that the Petitioner did not and could not have violated the order allegedly contemned?.

4. Whether a district court has the power to issue orders for the arrest for contempt, and other relief, when it is without jurisdiction over the subject matter or the person against whom such orders were entered, and being that the case was on appeal before another court?

5. Whether the United States Court of Appeals for the First Circuit properly applied the Fugitive Disentitlement Doctrine in light of this Court's opinion in Degen v. United States, 517 U.S. 820, 823, 116 S.Ct. 1777, 135 L.Ed.2d 102 (1996)?

6. Whether the District Court afforded Charles Unanue all the constitutional protections he was entitled to, including the right of due process and representation by counsel in finding him in civil or criminal contempt?

7. Whether the Honorable Jose Antonio Fuste should have recused himself retroactively from the matter?

8. Whether being that Kalif Trading, Inc. ("Kalif Trading") was owned exclusively by Emperor Equities, Inc. ("Emperor"), which alike Goya Foods, Inc. ("Goya") was a Delaware corporation, precluded Goya from filing its complaint in the district court in Puerto Rico?.

9. Whether after Goya's motion for the summary dismissal of appeal No. 01-2412 of the orders contempt and incarceration, of Charles, in Puerto Rico without bail or hearing, on "fugitive disentitlement" grounds prior to briefing, was denied, and then after timely briefing and oral argument of the fully briefed appeal, its summary dismissal (at Goya's repeated

urging) based on the same previously denied "fugitive disentitlement" which was what was being appealed, violated the rights guaranteed by Const. Amendments V and XIV?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were petitioners Liliane Unanue ("Liliane"), Charles Unanue, ("C harles"), Kalif Trading, Inc. ("Kalif Trading") , and respondent Goya Foods, Inc. ("Goya"). Other parties in the action are Respondents Ira Leon Rennert, 625 Park Corporation, and Wallack Management Co., Inc.

Kalif Trading Inc. ("Kalif Trading") is wholly owned by Emperor Equities, Inc., ("Emperor") which like Goya, is a Delaware corporation.

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Petition For A Writ of Certiorari
To The United States Court Of Appeals
For The First Circuit

Petitioner, Charles Unanue, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit issued on December 27, 2001, which was also the subject of a June 4, 2002 denial of a petition for rehearing en banc and for panel rehearing.

OPINIONS BELOW

The October 31, 1997 determination of the United States District Court for the District of Puerto Rico is reported at 982 F. Supp. 103. An appeal resulted in the November 28, 2000 judgment and order of the United States Court of Appeals for the First Circuit, an "errata" thereto on December 20, 2000, and an Order of January 29, 2001. That appeal is reported at 233 F.3d 38.

On October 31, 2001, while the Petitioner's appeal was pending, the United Sates District Court for the District of Puerto Rico issued a Warrant for the Arrest of the Petitioner premised upon an alleged contempt of court. That, in turn, was appealed and led to the December 27, 2001 judgment and opinion, reported at 275 F.3d 124, which is the subject of this Petition for Certiorari. Petitioner's motion for rehearing en banc and for panel rehearing was denied on June 4, 2001.

JURISDICTION

On December 27, 2001, the United States Court of Appeals for the First Circuit issued its Opinion and its Judgment in this matter. Petitioner's petition for rehearing was denied on June 4, 2002.

The jurisdiction of this Court to review the opinion and judgement of the United States Court of Appeals for the First Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Article IV, Sec. 1

> Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Law prescribe the Manner in which such Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. amendment V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a present or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offences to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amendment VII.

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rule of common law.

U.S. Const. Amendment XIV.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1738.

The Acts of the legislatures of any State Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and it Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of that court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shalll have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C.A. § 455(a):

Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

BACKGROUND AND HISTORY OF THE CASE

This case arises from a dispute among members of the family that founded Goya Foods, Inc. ("Goya"). The Goya feud started when Charles Unanue ("Charles") in his capacity as president of the company and chief operating officer of Goya and all the related family businesses, refused to participate in a scheme to defraud his father's incapacitated and illegitimate son and in the felony tax evasion which he discovered had been taking place since 1966.

Charles was ousted by his father and brothers after he was obliged to make a public disclosure of those illegal activities when his family refused to correct them, and threatened that if discovered they would be blamed on him. The disputes arising from the ouster of Charles were seemingly settled by an agreement entered into in 1972, and later amended in 1974.

The 1972 settlement agreement included a provision that Charles' ownership in the Goya companies would be sold in an Initial Public Offering ("IPO"), and the 1974 amendment changed the terms of settlement and included a waiver of Charles' future inheritance from his father (which future inheritance waiver and other changes were forbidden by the fundamental laws of Puerto Rico, where it was executed, resulting in the agreements being void and unenforceable under the Civil Code of Puerto Rico from their very inception (See, In the Matter of the Settlement of the Accounts of Unanue, 255 N.J. Super. 362, 365, 605 A.2d 279, 281 (Law Div. 1991), affirmed, 311 N.J. Super. . 589, 710 A.2d 1036 (App. Div. 1998), certif. denied, 157 N.J. 541, 724 A.2d 801 (1998), cert. denied, 526 U.S. 1051, 119 S.Ct. 1357, 143 L.Ed.2d 518, rehearing denied, 526 U.S. 1140, 119 S.Ct. 1800, 143 L.Ed.2d 1026 (1999)).

Charles' father Prudencio Unanue ("Prudencio") founded Goya, in 1936, at a time that he was bankrupt, using funds provided by his wife ("Carolina") from her inheritance. Goya

was the flagship of the family businesses, which became a conglomerate of separate business entities, related through their common ownership by the Conjugal Partnership of Prudencio and Carolina and by their sons. See, Unanue, 255 N.J. Super. at 367, 605 A.2d at 282.

Prudencio and Carolina had immigrated from Spain to Puerto Rico in 1904 and 1906, respectively, and were married in Puerto Rico while still being citizens of Spain, in 1921. Under the family laws of the Civil Codes of both Spain and Puerto Rico a legal partnership of gains was created on the day of the marriage ("Conjugal Partnership"), which would be governed by the family laws of Puerto Rico and be the exclusive owner of all of Prudencio's and Carolina's economic gains during the marriage, excepting inheritance. (31 L.P.R.A. §3641). The Conjugal Partnership would be managed by the husband, and governed by the partnership and family laws of the Civil Code of Puerto Rico, irrespective of any changes in residence, domicile or nationality of either or both of the spouses. See, 31 L.P.R.A. § 284; Sanchez v. Bowers, 70 F. 2d 715 (2d Cir. 1934)

Prudencio and Carolina resided in Puerto Rico (where Charles was born) until 1924 when they moved to Brooklyn, New York, and later to New Jersey. Two sons were born in Brooklyn and the last one in New Jersey. From 1949 to 1969 they resided approximately equal amounts of time in Puerto Rico and New Jersey, with considerable time also being spent in Spain. See, Unanue, 255 N.J. Super. at 366, 605 A.2d at 281. Significantly, after Prudencio's last trip from Puerto Rico to New York in October 1970 (which was his only trip, since 1929, without Carolina) and upon his return to Puerto Rico in mid-November 1970, both Prudencio and Carolina (who had become citizens of the United States in 1946 and 1956) resided continually in Puerto Rico, without ever leaving the island, until their respective deaths and interment in Puerto Rico, in 1976 and 1984. See: Unanue, 255 N.J. Super. at 371, 605 A.2d at 284).

Thus, for more than five years and at the time of their deaths, Prudencio and Carolina were unmistakably domiciled in and were citizens of Puerto Rico, and the United States, pursuant to 48 U.S.C. §733a. Therefore, they were not and could not have been domiciled in New Jersey; and hence their Conjugal Partnership, its property and their estates were unquestionably governed by the Civil Code of Puerto Rico. Indeed, the Conjugal Partnership and its property would have been governed by the law of Puerto Rico, where it had been created, even if the spouses had lived and died elsewhere, as is the rule for partnerships and corporations, which are not dependent of the situs of partners or stockholders. In addition, Prudencio's Last Will intentionally violated the fundamental laws of Puerto Rico by excluding Charles and Augusto Falero ("Augusto"), Prudencio's out-of-wedlock incapacitated son, and was therefore invalid. 31 L.P.R.A. §§ 2362, 2370.

More than ten years of peace reigned between Charles and the rest of his family which held the control of the conglomerate of related family business (collectively, the "Goya Companies"), continuing until after the death of Charles' mother, in 1984, which was after Charles and the rest of his family had released their claims against each other and which was before any dispute arose, in 1987 after Charles' mother's death.

In 1976, Charles' independently wealthy wife ("Liliane") purchased shares of 625 Park Corporation, a New York cooperative corporation. Before that, in 1971, Emperor Equities, Inc., a Delaware corporation ("Emperor") owned by Liliane had purchased a condominium unit in Puerto Rico, and in 1972 purchased two more condominium units in the same building, all for fair value at the time. One of the units, Penthouse B in the San Geronimo Condominium, was transferred to Kalif Trading, Inc. ("Kalif") in 1983 by Emperor also for fair and valuable consideration while the parties were still at peace. In the early 1970's Liliane made an

installment purchase of a house in Spain. Finally, before any dispute arose after the death of Charles' mother, Liliane acquired an apartment in Paris.

Charles mother (who had remained in Puerto Rico after his father's death in 1976), died in 1984. Charles subsequently learned that although the valuable controlling stock in Goya had been owned by the Conjugal Partnership as a consequence of their marriage having occurred in Puerto Rico without a pre-nuptial agreement, Charles' father had (with the participation of Charles' brothers) illegally transferred, on November 17, 1970, all of the property of the Conjugal Partnership of which he was the responsible fiduciary and manager, specifically including the shares of stock that held the control of the entire conglomerate of Goya Companies, to an *inter vivos* trust in New Jersey that Goya's counsel had created that same day. All of this was done without any indicated awareness or written consent of his wife and partner, Carolina. The effect of the transactions was a theft of the shares that held the very valuable control of the Goya Companies thereby: a) depriving Carolina of her 50% ownership; b) depriving Prudencio's incapacitated out-of-wedlock son, Augusto, of his inalienable entitlement to 1/5 of the true market value of Prudencio's estate; c) depriving Charles of his inalienable right under the law to 1/5 of the correct value Prudencio's estate, and also of Charles' right under the law and Last Will of Carolina, to 1/4 of the market value of what her estate should have been; and, d) depriving the IRS and other taxing authorities of more than 90% of the millions of dollars in taxes that would have been due if the voting control of the Goya Companies had not been surreptitiously stripped from the controlling shares of stock and illegally transferred to Charles' brothers, just four months before the impending death of Prudencio (and at a time when Prudencio was totally stuporous as certified by his principal physician in Puerto Rico).

Upon the death of Prudencio, Carolina became the absolute owner of one half of the fair market value of shares of stock that held the control of all the Goya Companies, as well as half of all of the other property of the Conjugal Partnership. In actuality, she was deprived of her half of the entire multi-hundred million dollar value of the property owned by the conjugal partnership and spent the last 14 years of her life as a pauper entirely dependent on the limited "room and board" provided to her by one of the Goya Companies under the control of Charles' brothers. Without any expenditures other than the living expenses that were provided to her, Carolina's entire estate was claimed by Charles' brothers to have consisted of only $30,000 held in an inaccessible, to her, savings account in Bayamon, Puerto Rico (of which she was probably not even aware).

When Charles questioned his brothers about what became of their parents' estates, his brothers commenced suit against him in New Jersey in 1987. (See, Unanue, supra). They sued in New Jersey even though, at that time and since his divorce in 1967, Charles had no contacts with New Jersey, and both his father and mother who were naturalized citizens of the United States had become citizens of Puerto Rico pursuant to 48 U.S.C. §733a, and had been domiciled there for many years, until to their deaths. Indeed, Charles' parents never resided in New Jersey after they moved permanently to Puerto Rico, in the late 1960's.

In that New Jersey action, Charles' brothers sought a determination that Charles did not have an interest in his father's estate, that the 1972 Agreement and the 1974 Amendment which had been executed in Puerto Rico and were nullities under its laws, *were valid and enforceable notwithstanding that New Jersey had neither jurisdiction over the agreements and that 11 of the 12 parties to those agreements were not parties in the New Jersey action.* They also sought counsel fees under an unenforceable penalty

provision in the invalid 1974 settlement agreement. (See, Unanue, supra).

In 1990, while the New Jersey action was pending, Goya paid the litigation costs of having the largest of the legal firms that it was using in its litigation with Charles, to sue Charles in New York, and encumber the property of Charles' wife who was supporting him, in New York, by falsely alleging that Charles had made "fraudulent transfers" to her. Having legal bills that were pending, Charles was obliged to file for bankruptcy protection in the Bankruptcy Court of Puerto Rico. In the New Jersey action, a substitution of parties was made by consent order, in December, 1991, whereby the bankruptcy estate replaced Charles as the only defendant in that action. The bankruptcy estate declined to have counsel defend the action, although Charles was obliged to testify as a witness in that case.

Notwithstanding that the only party to the proceedings became the bankruptcy estate, the New Jersey court issued judgments in 1993 and in February 1995 in which it not only wrongly determined the domicile of Prudencio to have been New Jersey, but in which it also made rulings denying Charles' right (even though he was not a party to the lawsuit) to inherit from his father's estate as well as denying his right to inherit from his mother, who also was not a party in the New Jersey proceeding, and had bequeathed to Charles and his brothers an equal 1/4 of her estate. (See, Unanue, supra). The court then entered judgment of $6.9 million against Charles personally even though he was not a party and was still under the exclusive jurisdiction and protection of the U.S. Bankruptcy Court in Puerto Rico (so that no valid judgment could have been issued against him while he was in bankruptcy). The $6.9 Million was for the legal fees that Goya (as the alter ego of Charles' brothers) had paid to defend those brothers and their issue, with respect to their theft of the property of the Conjugal Partnership and of the estates of Prudencio and Carolina. The New Jersey court also entered

an additional $6.9 million judgment against the bankruptcy estate of Charles.

Goya, however, did not take either judgment to the bankruptcy court, which still had exclusive jurisdiction in the matter for any satisfaction of those judgments. Seven months later, the bankruptcy court dismissed without prejudice Charles' bankruptcy petition and the Adversary Proceeding in which Goya was claiming $20 Million from Charles' bankruptcy estate. The $20 Million claim of Goya, in which it again falsely and maliciously alleged "fraudulent transfers", was an attempt to collect $20 million for its alleged legal expenditures to defend and conceal the multi-hundred million dollar theft and tax-evasion regarding the property of Conjugal Partnership and the estates of Prudencio and Carolina. In dismissing the bankruptcy proceedings, the Bankruptcy Court made a finding that Charles had no debts or creditors and no reason to be in bankruptcy. Goya never appealed the dismissal.

Two months after the dismissal of the bankruptcy proceedings, Goya commenced the present action, *maliciously and falsely alleging for the third time "fraudulent transfers" by Charles, of property which as proven by uncontroverted property deeds, he never owned and could not and did not transfer to anyone, to defraud Goya or for any reason.* Goya's complaint against Charles was filed in the same district court in Puerto Rico in which the bankruptcy court had ruled, just two months earlier that *"Charles Unanue has no debts or creditors and no reason to be in bankruptcy"*

Goya, by alleging for the third time, the same "fraudulent transfers" by Charles, was itself fraudulently seeking to enforce the invalid and undomesticated New Jersey judgment against Charles, and to acquire all the real property and other residences of Liliane, in which Charles never had ownership. Goya did not have the New Jersey judgment against Charles validated in Puerto Rico through the required and

indispensable exequatur proceeding (without which validation it was without force and effect and could not be used in any manner in Puerto Rico, Ex parte Marquez Estrella, 128 D.P.R. 243 (P.R. 1991), apparently because it was well aware that it was impossible for the $6.9 million judgment against Charles to be validated and domesticated by exequatur because: a) there had not been due process; b) Charles had not been a party in the New Jersey proceedings, and; c) Charles had been under the protection of the bankruptcy court in Puerto Rico, which had exclusive jurisdiction over him, his assets and claims when the New Jersey judgment was obtained, and as a result of which, a judgment could not have been entered without the bankruptcy court's approval for any occurrence prior to, or during, the bankruptcy proceeding. (See, Docket Entries # 302 and 304).

Goya's alternative theory that Liliane is Charles' alter ego also failed when the First Circuit rejected the proposition that one human being can be the alter ego of another. Because Goya admitted at trial that it never had any evidence of any transfers of real property, to anyone, other than a sale of a 50% interest in an apartment, in 1991, and rejected the contention that there had been any fraudulent conveyances by Charles, and the First Circuit rejected the contention that any of the property had been owned by Charles, the had not been any possible basis or ground for the imposition of a constructive trust, which had not been mentioned, considered or imposed by the trial court..

In addition to the fact that there could not have been subject matter jurisdiction due to the fundamental absence of the required and indispensable exequatur proceeding, both Charles and Liliane sought early dismissal of the action for lack of in personam jurisdiction on the grounds they were not residents and had no minimal contacts with Puerto Rico at the time of suit. Docket entry # 23). Goya had claimed that jurisdiction existed because Charles had transferred Penthouse B, in the San Geronimo Condominium, *in 1983*, (although the

trial established that Charles never owned Penthouse B and hence did not and could not have transferred it to anyone, at any time). The district court, many months later, denied both Charles' and Liliane's motions, obviously accepting the wrong and misleading basis asserted by Goya. The proofs at trial established the above, beyond any doubt, that Charles was never the owner of Penthouse B, but the proceeding was still (and wrongly) not dismissed for the *proven* lack of in personam jurisdiction over either of the individual defendants.

Significantly, a prior contempt restriction on Liliane was lifted but only to have her testify and be tyrannized at trial, but still without a jury for her or any of the other defendants. Her repeated request for a jury for the defendants, was denied with the explanation that she was in contempt, but required to testify.

After the denial of a trial by jury; and with the further denial of discovery, and after denial of an oral motion for "non suit" based upon the admitted failure of Goya to have produced evidence to prove any of its allegation of transfers by Charles (to defraud creditors or for any other improper reason), the bench trial continued and lasted a total of ten days. In what was Goya's, Charles' brothers' and their counsels' attempts to beat Charles and Liliane into submission and to continue to punish them for Charles having made a public disclosure, at a press conference held in the penthouse suite of the New York Hilton Hotel in 1969, of Goya's and his family's on-going tax-evasion and fraud, Goya made many requests to the district court which resulted in, among other things, denying Charles, Kalif and Liliane discovery, denying Charles a jury trial notwithstanding the prior timely demand for jury trial by Liliane for the defendants, and compelling testimony in violation of the Constitutional rights of Charles and Liliane.

Finally and outrageously, after a motion for "non suit" was made due to Goya's conceded failure to present any

evidence of any of its falsely alleged claims of fraudulent conveyance (Transcript at pp. 819, 821, 831-832), which motion the Court took under abeyance, but never decided; and despite the impossible absurdity of holding one natural person to be the alter ego of another, and despite the lack of subject matter as well as in personam jurisdiction over the defendants, the district court nonetheless entered a judgment in favor of Goya. The district court then wrongly gave Goya the right to execute against Liliane's real property in Paris and Spain, and against any residence registered in her name.

The court of appeals clarified the judgment below, finding that the inclusion of the unidentified residences was far too broad. It then limited the right to execute, on the mistaken theory of "constructive trust" which could not apply due to the proven fact that Charles had never owned any of the property. to the specifically identified real property in Paris and Spain, (notwithstanding that the Sutton house apartment was a cooperative and not real property). However, the Appellate Court overlooked the fact that neither it or the district court, had any jurisdiction in the matter under the governing laws of the Commonwealth of Puerto Rico (which law both courts have the responsibility of understanding, recognizing and enforcing. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed 118 (1938). Charles moved, post-judgment, in the district court, for dismissal of Goya's claims on the grounds that the New Jersey judgment was never domesticated through the required exequatur proceedings was therefore without force and effect and could not be used in any manner. (Docket Entry #302, # 304). The district court avoided ruling on that motion holding that because the matter was on appeal it was out of the district court's jurisdiction, *yet without ever having have had jurisdiction, at Goya's urging but without due process, it issued the contempt, arrest and incarceration in Puerto Rico, without bail or hearing, of both Charles and Liliane, for Liliane's sale of her shares in 625 Park Corporation, which the trial court had found that she had purchased with a loan from Citibank, using her fully*

available and large line of credit at the bank, and therefore had the right to sell. Charles who had not owned or sold the shares was also found in contempt and ordered to be arrested and incarcerated in Puerto Rico for that sale, by Liliane, of her exclusively owned personal property. It is for the wanton dismissal of the appeal, that the Petition for Certiorari is being made to this Highest Court.

On appeal, this Circuit Court held that findings necessary to establish a fraudulent conveyance, and that Charles had a prior ownership in any of the property allegedly transferred, were never made. The court also held that Goya's claim that Liliane was the alter ego of Charles could not be sustained. Instead and without notice, this Court adopted a new theory of its own, a theory of constructive trust, and affirmed the judgment with some modifications. In doing so, it overlooked the fact that without evidence of prior ownership or payment by Charles there could not be a constructive trust, and it also overlooked the further fact that the constructive trust theory had not been adopted or considered by the court below.

After the appeal of the contempt, arrest and incarceration in Puerto Rico, without there being any subsequent occurrence to impart subject matter or in personam jurisdiction on the district court, and again upon the demand by Goya, the district court issued the warrants for the arrest and incarceration (without bail) in Puerto Rico, of both Charles and Liliane. Obviously Goya hoped thereby to prevent any further discovery of Goya's, its stockholders' and its counsels' ongoing series of crimes and other wrongdoing since 1966, in violation of the constitution..

STATEMENT OF FACTS

At the outset of this case, without even the validation of the New Jersey judgment through the indispensable exequatur proceedings, the district court entered several ex parte orders attempting to freeze Liliane's assets. Thus, the district court

purported to attach and encumber millions of dollars of assets of a person whom the judgment was not even against; and to do so without notice for pre-seizure hearing, to do so without exigent circumstances, and even without scheduling any post-seizure hearing, contrary to Connecticut v. Doehr, 501 U.S. 1, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991), upon placement of a mere ten thousand dollar bond by Goya.

The evidence at trial led the district court to find that the shares of the Park Avenue cooperative (625 Park Corporation) were acquired by Liliane for $25,000 with the proceeds of a loan which *she* had obtained from a commercial bank. The district court did not find, and could not find, that the loan for the purchase of the shares of 625 Park Corp were repaid by anyone other than Liliane. The final judgment entered by the district court "recognize[ed] plaintiff's right to execute judgment over the properties known as the Sutton House apartment in New York City and any residence registered in [Liliane's] name including the Fuengirola, Malaga, Spain villa and the Paris Apartment". The shares of 625 Park Corporation were *not* specifically identified or included in that judgment. In fact the district court clearly held that the shares had been purchased by Liliane without any indication of any economic assistance from Charles..

On appeal, the First Circuit Court of Appeals has held that the language in the judgment regarding "residence registered to [Liliane's] name" was too broad to be sustained. The opinion of this Court modified the judgment to limit Goya's right of execution to the "identified real property held in Liliane's name", which it had specifically identified as "the three named properties in New York, Paris and Malaga.", on that erroneous and impossible finding of "constructive trust". The one New York property thus referenced could only have been the Sutton House apartment, the proceeds of which were specifically and clearly mentioned in the district court's judgment. Also, the Circuit Court rejected Goya's claim of any fraudulent conveyance or of an alter ego relationship

between Charles and Liliane. Instead, this Court *sua sponte* adopted its own theory of constructive trusts notwithstanding that such theory was not mentioned in the judgment below, and also despite the absence of any evidence at trial that Charles had been the owner of or provided the purchase money for the any of the property held by Liliane which evidence would be *indispensable* to establish a constructive trust. As shown at trial, there was no evidence whatsoever, that any of Liliane's or her companies' property (other than Apartment 5-A which Emperor Equities, Inc. purchased from Charles and Liliane in 1971 for full consideration), or that the shares of 625 Park Corporation, had been acquired with Charles' money. Indeed, as shown by the district court's decision in this matter, it could not be found that the shares of 625 Park Corporation were acquired with Charles' money. Even if Charles had given his wife (or anyone else) money with which to buy properties (which he did not do), the property would still belong to the buyer and not to anyone else. In addition, the November 28, 2000 opinion of the Appellate Court stated that the judgment was enforceable specifically only against the three "identified real property" in Liliane's name, could not include shares of stock. Indeed, Goya had been unable to present any evidence at trial of any transfers or funding by Charles to any person or entity to defraud creditors, *and admitted that it didn't have any.*

According to Goya in is application to the district court for an order to show cause in October 2000, the shares in the Park Avenue cooperative corporation were sold by Liliane in 1998. Goya nonetheless requested that Charles be ordered to show cause why he should not be held in contempt because the shares in 625 Park Corporation had been allegedly sold by Liliane several years earlier. The district court issued an order to show cause, which stated that it was serving as process and which stated that Charles was to appear in Puerto Rico on October 31, 2000 to show cause. The order to show cause was dated October 20, 2000, and was placed under seal. The order to show cause was not served upon Charles until just a

few days before the October 31, 2000 date (and not upon Liliane). Charles was in New York at that time (where he had resided since before this lawsuit started), and not in Puerto Rico. The individual giving Charles a copy of the order to show cause claimed to be a New York City detective but refused to show any such identification. (Id.) He was accompanied by Goya's general counsel, Mr. Matetsky. (Id.) It subsequently appears that the person was Mr. Jim Constantino of BDA Investigations, located a 220 E. 42nd Street, in New York City. Significantly, neither Charles nor Liliane were furnished with any affidavit of service of the order to show cause nor does one appear on the docket of the district court.

The order to show cause expressly threatened Charles with arrest for an alleged transfer which he could not possibly have made because the shares of stock were not his and were not in his name. In view of the unwarranted threats and the order to appear immediately in Puerto Rico, with $4.6 million dollars or to be arrested and incarcerated without bail, by a judge that never had jurisdiction over him or over the still unenforceable New Jersey judgment, it thus became imperative that Charles have a lawyer defend him against the false charges that Goya was making against him.

Charles and also Liliane, who had not been served, had two lawyers in Puerto Rico make a timely appearance and ask for any continuance to enable them to become fully retained and sufficiently familiar with the case to effectively represent Charles and Liliane. At Goya's request no extension of time whatsoever was granted. After thus denying Charles and Liliane the right and benefit of counsel, the district court found both Charles and Liliane to be in contempt of court and (as demanded by Goya) signed the warrants for their arrest and incarceration without bail in Puerto Rico.

The district court did all of this notwithstanding that that it continued to be without any kind of jurisdiction, and even

though the lawyers that Charles and Liliane had tried to retain appeared before the court in the civil case and sought a short adjournment so they could effectively represent Charles and Liliane in this matter of such great consequence to their personal freedom and constitutional rights. The district court denied their request and thus knowingly denied Charles and Liliane of the ability to have counsel appear on their behalf.

Charles' suspicion that the district court has been biased throughout the entire proceeding was furthered by the district court seeking to compel him to appear in Puerto Rico under threat of arrest for an alleged sale of stock, he had not made and which the proofs before the district court already showed he had not sold. Indeed, the fear that the district court had already decided to find that Charles was in contempt turned out to be well founded. Not only did the district court deny Charles the ability to be represented by counsel, but the district court showed that it had pre-judged the issue of the alleged contempt of both Charles and Liliane, by stating "[t]he problem that I have here is that there was an order entered by this court regarding disposition of assets, and that order was violated."

Thereafter, the district court issued a warrant for the arrest of Charles (and his wife). The arrest warrant, although stating that it is for civil contempt, states that Charles is to be held without bail until such time as the district court holds a hearing, and contains no provision whatsoever whereby Charles has the ability to obtain a release from incarceration. The district court also issued other orders, including the appointment of a special master to liquidate property of Kalif of which Liliane is the only stockholder, without the consent of the defendants.

Charles, appearing pro se, promptly moved before the district court to have the arrest warrant vacated, and to also have the order to show cause and subsequent orders entered by the district court vacated as well. While that motion was pending, the decision of this Court with respect to the appeal

from the district court's final judgment issued. That decision of the Circuit Court stated that the district court's judgment reached "real property" held by Liliane, and identified the real property as "the three named properties in New York, Paris and Malaga." The one New York property thus referenced was obviously the Sutton House apartment, the proceeds of which were specifically and clearly mentioned in the district court's judgment. The district court's judgment was modified to apply only to "real properties" and not to encompass any unnamed property held by Liliane. Thus, while Charles' motion was pending, it became clear that the district court's judgment did not extend to the shares of 625 Park Corporation. [1] Nonetheless, The district court denied that

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[1] The denial of Charles' motion occurred on December 5, 2000. The Notice of Appeal in the present appeal was dated December 19, 2000. Up to that date, the Opinion of the First Circuit had limited the judgment to "real properties" (with respect to which shares in a New York cooperative are not real property), and further limited the judgment to the Sutton House apartment proceeds, the Paris apartment, and the Spain house. Coincidentally or not, on December 20, 2000, an unsigned errata issued from the First Circuit which significantly but wrongly amended the First Circuit's opinion in a way that it could be interpreted (among other ways) to apply to the Park Avenue cooperative shares by amending it to have it apply to any residence "mentioned above." In an Informative Motion dated December 27, 2000 before the district court, Goya itself described the errata as "amending the opinion", and intentionally misinformed the district court, in order to steal most of the other property of Liliane, also worth millions of dollars, using an invalid judgment against Charles and without any evidence to support any of Goya's false allegations, by falsely certifying: "[A]s per the "Errata," the Opinion was amended to provide that the district court's judgment recognizes Goya's right to execute against all the properties mentioned in the Opinion of the Court of Appeals, which include the Park Avenue apartment mentioned at footnote 3 of the Opinion (see amendments to page 14, lin 6 of the Court of Appeals Opinion included in "Errata."' The

motion, and the present appeal ensued. (App. at A-357 – A-359).

SUMMARY OF THE ARGUMENT

The orders entered by the district court for the arrest of Charles Unanue (and his wife, Liliane Unanue) must be somehow reversed as a result of a number of deficiencies in their issuance by the court. Not only was the district court without subject matter jurisdiction resulting from a failure of the New Jersey judgment to have been domesticated in Puerto Rico by way the required exequatur proceeding, but the court was also lacking personal jurisdiction over the defendants. Because the district court lacks jurisdiction, the orders and warrant must be vacated.

Even if the district court had jurisdiction, the district court failed to afford Charles Unanue those procedural safeguards to which a person is entitled in criminal contempt proceedings or in civil contempt proceedings. This denial of the process that is due one charged with contempt requires that the actions of the district court be vacated. Moreover, the district court has clearly shown that it has pre-judged this matter, and consequently the judge below should have recused himself in the action and the orders must be vacated.

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above was contradicted by the subsequent Order of the Appellate Panel stating that the "Errata" did not change anything, but allowing all the changes made by the "Errata" and reported to the six official reporting services, to to remain unchanged. At the very least, at the time of the decision of Charles' motion, a sale of shares of 625 Park Corporation were not prohibited by the courts.

LEGAL ARGUMENT

POINT I

THE DISTRICT COURT NEVER HAD AND COULD NOT HAVE HAD SUBJECT MATTER JURISDICTION BECAUSE GOYA CHOSE TO SUE TO ENFORCE ITS JUDGMENT AGAINST CHARLES WITHOUT ITS VALIDATION IN AN EXEQUATUR PROCEEDING.

The district court lacks subject matter jurisdiction because of the continuing failure of the underlying New Jersey judgment to have undergone the exequatur proceedings required by Ex parte Marquez Estrella, 128 D.P.R. 243 (P.R. 1991), which requires exequatur before any foreign judgment is enforceable in any manner in Puerto Rico. The district court's lack of jurisdiction arising from the continued unenforceability of the New Jersey judgment in Puerto Rico not only entitles Charles to contest this attempt by Goya to wrongfully harass him and endanger his and his wife's well being and life with incarceration in Puerto Rico and to wrongfully take millions of dollars of his wife's assets without being first required to comply with or obtain a stay of the order upon which the issuance of the arrest warrant was based, but the lack of jurisdiction is itself grounds for vacating the orders below.

Under the process of exequatur as required by Ex parte Marquez Estrella, supra, before a judgment can be enforced in any manner in Puerto Rico, it must be domesticated through proceedings designed to assure, among other things, that the foreign judgment was obtained with due process, that the foreign court had jurisdiction over the person against whom the judgment was entered, and that the judgment is not contrary to public policies or principles of justice of Puerto Rico. In this case, the New Jersey judgment could not pass muster on any of those absolute requirements for validation in any exequatur proceedings. Thus, Goya disingenuously filed

its complaint against Charles and Liliane without the required and indispensable exequatur proceeding, knowing it was impossible to achieve, and then proceeded illegally to harass Charles and Liliane, without validation or domestication of the unenforceable $6.9 million New Jersey judgment for which it had apparently paid $20 million in election campaign contributions in addition to the millions in contributions raised by the President and chief executive officer of Goya, Charles' brother Joseph Unanue, acting as co-chairman of the fund raising committee for the reelection of the New Jersey governor. *It apparently did so to enable Charles' brothers, their lawyers and accountants, to avoid having to pay to Charles the estimated $6.4 Billion that his 23% ownership share of the family business would be worth today, had he been allowed to continue as the chief operating officer of the business and continue the minimal 23% annual increases in net profits that had been consistently produced under his 22 year stewardship, from 1947 to 1969.* Also to avoid paying Liliane the many hundreds of millions that they would owe her for the damages resulting from the seizure of almost all of her property and the harassing lawsuits, and to avoid paying to the Internal Revenue Service an even greater amount than the record $48 million allegedly owed by the now famous Mark Rich, (who had lived above the Unanues but sold his shares in 625 Park Corporation to Mr. and Mrs. Rennert, the new "respondents" in this case, while a fugitive. . . prior to his Presidential pardon, living in luxury in Switzerland).

Goya and its counsel were well aware that the New Jersey judgment, for which Goya contributed and generated vast political contributions, could not be validated for use in Puerto Rico or elsewhere because there had been a denial of due process, because Charles was not a party and furthermore was under the protection of the bankruptcy court. The New Jersey judgment could not be domesticated in exequatur proceedings being that it was the product of a denial of due process, having been issued against Charles personally even though he was not a party to that action, because it violated

fundamental conjugal partnership law and inheritance rights that cannot be disregarded or waived under Puerto Rican law, and because the penalty clause in the 1974 Amendment which was the basis for the $6.9 million judgment against Charles was not only illegal under Puerto Rico law, where it was signed (31 L.P.R.A. §§ 441, 2361, 2362, 2367, 2370), as well as New Jersey law, but was contained in an agreement that was forbidden by the fundamental family and partnership laws of Puerto Rico (31 L.P.R.A. §§ 3391, 3421, 3432, 3551, 3621, 3622, 3624, 3641, 3672, 3673, 4311) and was therefore invalid and legally non-existent.

Thus, the New Jersey judgment, being incapable of enforcement *in any manner* in Puerto Rico, could not be the subject of any lawsuit in Puerto Rico unless and until it went through and was validated in the required exequatur proceedings. Being thus non-existent in Puerto Rico, there was nothing *(no case, no controversy, no judgment)* that the district court could have jurisdiction over. In other words, there was no subject matter for the litigation over which the district court could have jurisdiction.

With the district court being still engaged in on-going proceedings to enforce the New Jersey judgment, the failure of the New Jersey judgment to have undergone exequatur is still a timely and meritorious ground requiring the vacation and reversal of the orders which are the subject of the appeal, as well as the vacation and dismissal of this entire action.

POINT II

THE DISTRICT COURT DID NOT HAVE AND DID NOT ACQUIRE IN PERSONAM JURISDICTION OVER THE DEFENDANTS.

The defendants were citizens and domiciliaries of the State of New York at the time this action was commenced. They filed sworn statements which remain uncontroverted

that previous to Goya's law suit and thereafter they had not had minimal contacts with Puerto Rico, so that the district Court could not have had *in personam* jurisdiction over Charles (nor over Liliane). t is well settled that there must exist sufficient contacts between the party and the forum so that the assertion of jurisdiction over the party does not offend traditional notions of fair play and substantial justice. See, e.g., International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). The Supreme Court of Puerto Rico, relying on United States Supreme Court decisions, developed a three-pronged test to determine whether in personam jurisdiction could be asserted over a non-resident defendant. *See* Escude Cruz v. Ortho Pharmaceutical Corp., 619 F. 2d 902 (1st Cir. 1980). First, the non-resident must act or consummate a transaction within the forum. Id. at 904. Second, the cause of action must arise out of the defendant's action within the forum state. Id. at 905. Finally, the activity linking the defendant, the cause of action, and the forum must be substantial enough to meet the due process requirement of "fair play and substantial justice." Castro v. New York City Board of Education, 787 F. Supp. 26, 29 (D.P.R. 1992), affirmed, 972 F.2d 337 (1st. Cir. 1992), cert. denied, 506 U.S. 1061, 113 S.Ct. 998, 122 L.Ed.2d 149 (1993).

At the time of suit, neither Liliane of Charles were residents of Puerto Rico. Indeed, Liliane had even been required to post a non-resident's bond previously, in 1986, in legal proceedings in Puerto Rico. (See, Docket Entry # 23). The law is clear that not any act of a defendant in the forum state will give rise to jurisdiction. There must be some rational nexus between the plaintiff's claim and the activity of the non-resident defendant before it is constitutionally permissible to hold him or her amenable to suit in the forum state. Escude Cruz, 619 F. 2d at 905. Neither Liliane or Charles owned real property in Puerto Rico at the time Goya commenced its lawsuit. The alleged contact upon which the court below based its assertion of jurisdiction (i.e., the alleged

transfer of an apartment to Kalif by *Charles* in *1983*) was shown not to have occurred, and even if it had occurred would not have been a sufficient contact with Puerto Rico at the time of suit some twelve years after the transfer. Trial conclusively showed that the apartment that was transferred to Kalif was transferred by Emperor, having never been owned by Charles (who did not own Kalif). Thus, the cause of action did not arise out of Charles or Liliane's actions in the forum state.

Thus, the district court was, and continues to be without personal jurisdiction over Charles, and the orders below (and the entire proceedings) should be vacated and dismissed for lack of personal jurisdiction. Moreover, the finding that the district court had jurisdiction of Kalif, because it was Charles alter ego, also was error because, due to the absence of any evidence that it had ever been used by Charles, or anyone, to commit wrongdoing, made it impossible for Kalif to be the alter ego of anyone.

POINT III

THE DISTRICT COURT'S FINDING CHARLES TO BE IN CRIMINAL CONTEMPT SHOULD ALSO BE REVERSED FOR FAILURE TO PROVIDE CHARLES WITH DUE PROCESS

Although the warrant for Charles and Liliane's arrest and incarceration without bail states that the two are in civil contempt, Charles has actually been held to be in criminal contempt without being afforded the well-settled due process rights that must given to persons accused of criminal contempt. The very justification for coercive imprisonment as applied to civil contempt depends upon the ability of the contemnor to comply with the court's order. Shillitani v. United States, 384 U.S. 364, 371, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966), *citing*, Maggio v. Zeitz, 333 U.S. 56, 76 (1948).

POINT IV

THE DISTRICT COURT'S FINDING OF CONTEMPT AGAINST CHARLES VIOLATED REQUIREMENTS OF DUE PROCESS EVEN WITH RESPECT TO CIVIL CONTEMPT

The district court's findings that Charles was in contempt were made without sufficient notice to Charles of the *ex parte* order to show cause, and without an impartial hearing. Further, the district court had neither in personam jurisdiction or subject matter jurisdiction, and thus was without the authority to find Charles in contempt and to order his arrest without bail, in Puerto Rico, or anywhere.

A. Charles was Entitled to Notice and an Impartial Hearing.

Apart from being deprived of adequate notice of the hearing, Charles was also deprived of an impartial hearing regarding the basis for the order to show cause, *i.e.*, that the shares of the Park Avenue cooperative were improperly transferred. Instead, the district court found that Charles improperly transferred the shares despite Goya's own submission showing that it was not Charles, and that as a result the district court felt it could not do "anything other than order their arrest." Thus, Charles was not only deprived of adequate notice, but he was also denied any chance of his right to an impartial hearing given that the district court pre-judged Goya's allegations of contempt and held Charles in contempt for transferring shares which the record shows he did not own and with respect to which he did not receive the proceeds. Moreover, the decision of this Court, coupled with the provisions of the district court's opinion, establish that the precision necessary for contempt proceedings is absent. Charles has been held in contempt of court by the district court for selling shares of stock that he has neither owned nor transferred and which could not be held in a "constructive trust" created later by the Circuit Court.

B. The District Court Could Not Order Contempt Because It Did Not Have Subject Matter Jurisdiction

As set forth above in Point I, the district court lacks subject matter jurisdiction in the present matter because of the continuing failure of the underlying New Jersey judgment to have undergone the exequatur proceedings required by Ex parte Marquez Estrella, Supra. The foreign, New Jersey judgment, remains unenforceable in any manner in Puerto Rico. In addition, the District Court did not have proper jurisdiction because Emperor Equities, Inc. ("Emperor") (*a Delaware corporation, as is Goya*) was a party necessary for an adjudication of the claims, was not joined, and its joinder would have destroyed diversity jurisdiction.

With the district court being without subject matter jurisdiction over this action, it is also without jurisdiction to find any of the defendants in contempt or to issue a warrant for their arrest. Thus, the orders below must be reversed.

C. The District Court Could Not Order Contempt Because It Did Not Have *in personam* Jurisdiction

As set forth above under Point II, the district court lacks personal jurisdiction over Charles Unanue. Hence, the contempt order must be reversed for that reason alone.

POINT V

THE DISTRICT COURT'S CONTEMPT ORDER SHOULD BE VACATED AND JUDGE FUSTE SHOULD RECUSE HIMSELF FROM FURTHER PROCEEDINGS

On the return date of the Order to Show Cause on October 31, 2000, two attorneys appeared before the court at the request of Charles and Liliane Those attorneys informed the court that they were recently contacted and one was asked to represent Charles and the other to represent Liliane.

Before denying a request for additional time, the district court pre-judged the issue of the alleged contempt, stating "[t]he problem that I have here is that there was an order entered by this court regarding disposition of assets, and *that order was violated.*" (emphasis added).

With much further pre-determination of the outcome having been expressed by the district court, as well as its implied assumption that Charles was incapable of complying with court orders, the district court clearly displayed an appearance of a lack of impartiality (*particularly in light of its virtual denial of every application by the defendants in this case and the granting of virtually every application by the plaintiff during the course of this case*) such that the judge should have recused himself. Here there is much more than an appearance of impartiality, there is actual demonstrated prejudice. The order finding the Unanues in contempt should be reversed. *See* Antar, *supra*, 53 F. 3d at 579; *see also* Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988).

POINT VI

THE CASE BELOW MUST BE DECLARED TO BE NULL AND VOID BECAUSE IT NEVER LEGALLY EXISTED AND THE ORDERS BELOW MUST BE REVERSED

Due to the incontestable fact that, as Goya was well aware, the unenforceable foreign judgment that it had obtained in New Jersey could not be given full faith and credit and have any force and effect or be used in any manner in Puerto Rico, without it being previously validated in the required and indispensable exequatur proceeding in the Superior Court of Puerto Rico, which Goya knew was impossible, the entire proceeding and all the orders rendered below, have never validly existed and such finding must be made by this Court.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that all action taken by the district court since November 17, 1995, including those made pursuant to or after the October 20, 2000 order to show cause, including but not limited to the issuance of an arrest warrant for Charles Unanue, be reversed, and that it be decreed that the Hon. Jose Antonio Fuste be required to retroactively recuse himself from all proceedings in this matter, and that all proceeding in this case never validly existed except to the extend that Goya which voluntarily submitted to the Court's jurisdiction remains responsible and liable for all the prejudice it has caused.

Charles Unanue, *Pro se*
P.O. Box 2128
New York, New York 10021-0053

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GOYA FOODS, INC.	:	
Plaintiff,	:	
		Civil No. 95-2411(JAF)
v.	:	
ULPIANO UNANUE CASAL, a/k/a CHARLES UNANUE; LILIANE UNANUE, and KALIF TRADING, INC.	:	
Defendants.	:	

OPINION AND ORDER

Before the court are codefendants Ulpiano and Liliane Unanue's motions under Fed. R. Civ. P. 12 to dismiss plaintiff Goya Foods, Inc.'s complaint for lack of personal jurisdiction. Defendants also argue that venue is improper because there is no personal jurisdiction over them. 38 U.S.C. § 1406 (1988). Plaintiff has opposed defendants' motion. As the parties have submitted memoranda and affidavits in support of their positions, the

motion will be treated as one for summary judgment under Fed. R. Civ. P. 56. Summary judgment is rendered if the material facts are undisputed and if defendant is entitled to judgment as a matter of law. Marrero-Garcia v. Irizarry, 33 F.3d 117 (1st Cir. 1994). Having examined the parties' respective arguments, we DENY defendants' motions.

I.

This case is yet another chapter in a dispute among the heirs to the Goya empire that has been litigated with tenacity by all parties in Puerto Rico and other jurisdictions on the mainland. See, generally, In re Unanue-Casal, 164 B.R. 216 (D.P.R. 1993), aff'd, 32 F.3d 561 (1st Cir. 1994), cert. denied, __ U.S. __, 115 S.Ct. 1098 (1995). The present complaint alleges that defendant Ulpiano Unanue-Casal fraudulently transferred property to his wife Liliane, and to Kalif Trading, Inc., a dummy Panamanian company that serves as defendants' *alter ego* to prevent plaintiff from enforcing a $6.9 Million judgment it obtained against

Mr. Unanue-Casal in the New Jersey Superior Court. Subject matter jurisdiction of this court is invoked under 28 U.S.C. § 1332 (1988).

Plaintiff previously raised this fraudulent transfer claim in 1991, in an adversary proceeding as creditor in defendant Ulpiano Unanue-Casal's Chapter 7 case. See Matter or Unanue-Casal, 144 B.R. 604 (D.P.R. 1992), aff'd in part, appeal dismissed in part, 998 F.2d 28 (1st Cir. 1993). Back then, plaintiff sought to set aside allegedly fraudulent transfers made by defendant. Along with Mr. Unanue-Casal, named as defendants were his wife Liliane and Kalif Trading. The complaint in the adversary proceeding alleged that Since 1980, Mr. Unanue-Casal had been fraudulently transferring his assets to his wife and Kalif Trading. Among the assets allegedly transferred were cash, securities, and a condominium apartment at San Gerónimo Condominium in San Juan, Puerto Rico. Plaintiff requested an order declaring the transfers null and

void and restoring the assets to the debtor's estate. On September 12, 1995, the Bankruptcy Court for the District of Puerto Rico dismissed Mr. Unanue-Casal's case. Two months after the dismissal of Mr. Unanue-Casal's bankruptcy case, in November 1995, plaintiff filed the present lawsuit.

II.

The issue is whether defendants' contacts with Puerto Rico are sufficient under Puerto Rico law and the due process clause of the United States Constitution, so that the United States District Court for the District of Puerto Rico may exercise jurisdiction over defendants. Pritzker v. Yari, 42 F.3d 53 60 (1st Cir. 1994), cert. denied, __ U.S. ____, 115 S.Ct. 1959 (1995). The reach of Puerto Rico's long-arm statute (Puerto Rico Rule of Civil Procedure 4.7) extends to all cases where it is constitutionally permissible. Id. Due process requires that the defendant have certain "minimum contacts with the forum so that maintenance of

the suit does not offend the traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.s. 310, 316 (1945). Fewer contacts are required to support jurisdiction when the claim is related to those contacts Vencedor Mfg. Co., Inc. v. Gougler Industries Inc., 557 F.2d 886, 889 (1st Cir. 1977).

From 1962 to 1994, Mr. Unanue-Casal was domiciled in Puerto Rico, and up and until September 1995, he was a resident of Puerto Rico. Docket Document No. 21. Affidavit of Mr. Unanue-Casal. Until very recently, Mr. Unanue-Casal availed himself of this court. For five years, from 1990 to September 1995, Mr. Unanue-Casal was embroiled in the Proceedings of his Chapter 7 bankruptcy case. See In re Unanue-Casal, 164 B.R. 216 (D.P.R. 1993), aff'd, 32 F.3d 561 (1st Cir. 1994), cert. denied, __ U.S. __, 115 S.Ct. 1098 (1995); In re Unanue-Casal, 159 B.R. 90 (D.P.R. 1993), aff'd, 23 F.3d 395 (1st Cir. 1994); Matter of Unanue-Casal, 144 B.R 604 (D.P.R. 1992), aff'd in part

and appeal dismissed in part, 998 F.2d 28 (1st Cir. 1993).

Mrs. Unanue admits that she was a resident of Puerto Rico until June 1986. Docket Document No. 23. Affidavit of Mrs. Unanue. In a deposition taken in October 1990, Mrs. Unanue testified that she makes her home where her husband does. Docket Document No. 34, Exhibit 14. In her motion to dismiss, Mrs. Unanue does not aver or present any evidence that she no longer shares the same residence with her husband.

Plaintiff claims that the Unanues, either directly or through their agents, have both conducted business and participated tortious acts in Puerto Rico. Specifically, plaintiff alleges that defendants fraudulently transferred a condominium apartment located in San Juan, Puerto Rico, to codefendant Kalif.[1] Under the forum's long-arm statute,

[1] This apartment continued to be used by the Unanues at least until November 1995, when this lawsuit was filed. Docket Document No. 12. Exhibit 1

we may take jurisdiction over defendants, since the action arises out of defendants' business transactions and participation in tortious acts in Puerto Rico. 32 L.P.R.A. App. III, R. 4.7(a)(1), (2) (1983).

Defendants have also exhibited sufficient minimum contacts to subject them to our jurisdiction. Ticketmaster-New York. Inc. v. Alioto, 26 F.3d 201, 206 (1st Cir. 1994). This claim arises directly from defendants' alleged fraudulent transfer of their San Gerónimo apartment, located in San Juan, Puerto Rico, to Kalif Trading, in order to defraud Goya. Defendants purposely availed themselves of this court to protect this property interest from creditors during the bankruptcy proceedings.

Further, this court has an interest in obtaining an effective resolution of this controversy that has been bouncing back and forth between this court and the bankruptcy court for the last six years. On the other hand, any inconvenience for defendants appears minimal. As

already stated, defendants have litigated in this forum for the last several years without any inconvenience shown or alleged. Nowadays, traveling between Puerto Rico and New York, defendants' alleged new domicile, does not present any onerous circumstance in a constitutionally significant way. See Pritzker, 42 F.3d at 63-64.

In sum, the instant litigation arises out of defendants' fraudulent transfer of real property located in Puerto Rico. Defendants themselves have repeatedly taken advantage of the benefits and protections of Puerto Rico and its legal apparatus. Defendants had to foresee themselves being haled into this court to litigate a matter involving their business transactions in Puerto Rico. The motions to dismiss and for improper venue are DENIED.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 13th day of November, 1996.

s/
JOSE ANTONIO FUSTE
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GOYA FOODS, INC.	:	
Plaintiff,	:	
		Civil No. 95-2411(JAF)
v.	:	
ULPIANO UNANUE CASAL, a/k/a CHARLES UNANUE; LILIANE UNANUE, and KALIF TRADING, INC.	:	
Defendants.	:	

OPINION AND ORDER

Plaintiff, Goya Foods, Inc., moves to strike a demand by defendants, Ulpiano Unanue Casal, a/k/a Charles Unanue, Liliane Unanue, and Kalif Trading, Inc., for a jury trial.

Fed. R. Civ. P. 38 requires the filing of a jury demand within ten days of the filing of the last pleading on the issue to be tried. In this case, as in most, the answers to

the complaint were the relevant pleadings. The only defendant who filed a demand for a jury within ten days of answering is Liliane Unanue. Charles Unanue filed his jury demand nearly six months after the filing of his answer. His demand is time-barred and he has thus waived his Seventh Amendment right to a jury. Defendant Kalif Trading asserts that since they share counsel with Liliane Unanue, her demand for a jury trial should apply to them as well. As hermeneutic an endeavor as the law may sometimes seem, it does not permit courts to divine a vicariously intended jury demand. We cannot interpret Liliane Unanue's jury demand to stand as that of another party.

Liliane Unanue had demanded a jury trial in a timely manner. However, she also happens to be the defendant against whom this court ordered an entry of default because she did not comply with court orders regarding discovery, which provides for the sanction of

entry of default under Fed. R. Civ. P. 37(b)(2). Since default has been entered against her, the trial will be held against the remaining two defendants. After default has been entered under Fed. R. Civ. P. 37(b) (2) and where hearings are required to determine the damages for judgment, a party has no right to jury trial under either Fed. R. Civ. P. 55(b) (2) or the Seventh Amendment. Goldman. Antonetti, Ferraiuoli, Axtmayer & Hertell v. Medfit International. Inc., 982 F.2d 686, 692 n.15 (1st Cir. 1993), quoting Adriana Int'l Corp. v. Thoeren, 913 F.2d 1406, 1414 (9th Cir. 1990), cert. denied, 498 U.S. 1109 (1991), see also, Eisler v. Stritzler, 535 F.2d 148, 153 (1st Cir. 1976) (holding that subsequent to entry of default a hearing, rather than a jury trial, is required to assess damages); 10 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE §55.22(2) (3d ed. 1997). The law is crystal clear that the entry of default against Mrs. Unanue deprives her of the right to a jury trial.

Since all defendants have either waived or lost their right to a jury trial, we **DENY** defendant Charles Unanue's motion for a jury trial. This Order disposes of Docket Documents Nos. 141. 150. 153, and 154.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 6th day of June, 1997.

s/
JOSE ANTONIO FUSTE
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GOYA FOODS, INC.	:	
Plaintiff,	:	Civil No. 95-2411(JAF)
v.	:	
ULPIANO UNANUE CASAL, a/k/a CHARLES UNANUE; LILIANE UNANUE, and KALIF TRADING, INC.	:	
Defendants.	:	

MEMORANDUM OPINION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This case was tried before the court from July 2 to July 16, 1997. The court enters its findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

I.

This case is another chapter in a long-standing dispute among members of the Unanue-Casal family,

stockholders of the Goya Foods enterprises. The case has been litigated with tenacity by all parties in Puerto Rico and other jurisdictions on the mainland for more than two decades. See generally, In re Unanue-Casal, 164 B.R. 216 (D.P.R. 1993), aff'd, 32 F.3d 561 (1st Cir. 1994), cert.. denied, ___ U.S. __, 115 S.Ct. 1098 (1995). In order to provide the reader immediate background, we briefly recount the events surrounding the Unanue-Casal family controversy.

In 1969, prior to the death of the family progenitor, Prudencio Unanue, a dispute arose between Ulpiano (Charles) Unanue and his brothers backed up by their father, Prudencio Unanue. As a result of the conflict, Charles Unanue was removed from his position as an officer and director of Goya Foods and its various affiliated companies. This event set the stage for a series of lawsuits amongst the siblings.

In 1972, the parties tried to settle their differences by reaching an agreement (1972 Agreement) under which Charles Unanue was to receive certain payments in return for selling his shares in the, Goya companies. A year later, Charles Unanue claimed that the other parties to the agreement had breached it. In 1974, the parties amended the agreement (1974 Amendment): In addition to selling his ownership interest in all of the Goya companies, Charles Unanue agreed never to bring any claim or suit contesting or objecting to his father's will or trust, and not to interfere with the disposition of assets of stock by his father, his estate, the beneficiaries or his brothers. The 1974 Amendment also specified that any signatory to the amended stipulation who lost a suit concerning Prudencio Unanue's will or trust with another signatory had to pay the winner liquidated damages of double costs and attorney's fees. By 1976, Goya had paid Charles Unanue more than

$4.4 Million for his share of the Goya corporations pursuant to the 1972 agreement and the 1974 Amendment.

In 1987, eleven years after Prudencio Unanue's death, Charles Unanue demanded from his brothers his share of his parents' estate. Joseph and Frank Unanue, as trustees of their father's trust, sued Charles Unanue in the Superior Court of New Jersey, Probate Part. They sought a declaratory judgment barring Charles Unanue from maintaining any claims against their father's estate and trust as agreed upon in the 1974 Amendment. In 1995, a New Jersey trial court entered judgment against Charles Unanue and ordered him to pay liquidated damages pursuant to the 1974 Amendment, totalling $6.9 Million. Charles Unanue appealed the judgment, but did not post a supersedeas bond or move for a stay of its enforcement. The New Jersey Supreme Court has the appeal under submission.

In the present case, Goya seeks to collect this judgment against Charles Unanue. Goya alleges that Charles Unanue is the beneficial owner of all the property that ostensibly belongs to his wife, Liliane Unanue, and to Kalif Trading, Inc.,[1] a Panamanian company that allegedly serves as defendant's *alter ego*. Among the assets are cash, securities, and several apartments. Because Charles Unanue claiming to be insolvent, has no property in his name, Goya has been prevented from satisfying the $6.9-Million judgment.

The facts in this case span across two continents and more that two decades, and involve a myriad of transactions. Therefore, we have organized our findings

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[1] This court entered the default of Liliane Unanue and Kalif Trading for failure to comply with court orders. See Docket Document Nos. 20 & 104. Notwithstanding that fact, the record confirms that the court liberally allowed Liliane Unanue to present evidence at trial. See Fed. R. Civ. P. 1.

along spacial lines for a better comprehension of the conclusions of law that follow our findings of fact.

A. Puerto Rico Transactions.

In 1968, Charles and Liliane Unanue acquired Apartment 5A at the San Gerónimo Condominium, 860 Ashford Avenue, San Juan, Puerto Rico. Three years later, in 1971, they transferred the property to Emperor Equities, Inc. The corporation was solely owned by Liliane Unanue, with Charles Unanue serving as an officer of the corporation until 1988. Defendants admitted at trial that they decided to transfer the property to this corporation on counsel's advice to avoid any claim that Charles Unanue had a proprietary interest in the apartment. Back then, Charles Unanue was in contested litigation with Goya, and some of the claims sought money judgments against him.

By November 1972, Emperor Equities had purchased two more apartments at the San Gerónimo Condominium: Apartment 5D and Penthouse 11B. At that

time, Charles Unanue had already receive substantial payments from Goya. Although the apartments belonged to the corporation, defendants moved their residence to the penthouse in 1973.

Emperor Equities eventually sold or transferred Apartment 5D and Penthouse 11B. In August 1983, Emperor Equities transferred Penthouse 11B to Kalif Trading, the Panamanian company. In 1991, it sold Apartment 5D to a third party; after the sale, most of the sale proceeds were transferred to a Swiss bank account to ensure that Goya would be unable to attach the funds.

B. New York Transactions

After Charles Unanue had received all his settlement payments from Goya, both Charles and his wife Liliane participated in a series of real estate and securities transactions in New York.

In March 1976, Liliane Unanue bought shares in a cooperative apartment at 625 Park Avenue in New York.

Despite a very low purchase price of $28,000, Liliane Unanue still had to borrow money from Citibank for this transaction because she had no liquid assets. There is no documentary evidence as to who eventually paid off that loan. Although the purchase price was only $28,000, maintenance payments were $3,000 a month. Charles Unanue, and not Liliane, guaranteed to the coop board the maintenance payments. Moreover, the apartment required extensive renovations and Charles Unanue procured insurance and became the insured party in connection with these renovations.

Several years later, in 1981, Liliane Unanue purchased an apartment at the Sutton House, on East 52nd Street. Charles Unanue had leased this apartment since 1969. The person or entity who paid for the Sutton House apartment did so with a bank check drawn on Credit Suisse in New York. At the time, only Kalif Trading had an

account at that bank. Eventually, this property was sold to a third party.

Charles Unanue also invested in securities. In January 1977, Charles Unanue provided a certified financial statement to First National City Bank (Citibank). He listed as his largest asset a Merrill Lynch securities account, denominated "Mr. Charles Unanue A/C No. 2," with a net value of $1,449,000. He listed another account as "Citibank Custody Account," which had a cost value of $158,640, and a market value of $242,390. Later that same year, in November, Charles Unanue provided Merrill Lynch with personal financial information. He declared that he had at least $2,000,000 in securities. Six months later, in May 1978, Charles Unanue individually submitted a financial statement to Citibank. Charles Unanue listed the "Mr. Charles Unanue A/C No. 2," with a value of $1,977,783 net of margin debt. Finally, in September 1978, an internal memorandum from Citibank stated that Charles

Unanue's equity in his Merrill Lynch accounts was approximately $2.5 Million.

In spite of this $2.5 Million equity, Charles Unanue alleges that he had no personal funds left by 1980. He claims that taxes, attorney's fees, litigation, and living expenses consumed all his wealth, but he has no documentation to support his claim. On the other hand, Goya argues that Charles Unanue maintained substantial assets in the name of Kalif Trading. In November 1980, all the securities in the "Mr. Charles Unanue A/C No. 2" account deposited first at Merrill Lynch and later at E. F. Hutton, were transferred to a new E.F. Hutton account in the name of Kalif Trading, Inc. The securities transfer from the Mr. Charles Unanue No. 2 account to the Kalif Trading account was effected in a letter signed by Liliane Unanue on behalf of Kalif Trading.

During the eighties, over $1 Million in checks were drawn from Kalif Trading's bank accounts at the Dresdner

Bank and Credit Suisse payable to or for the benefit of Charles and Liliane Unanue. The Unanues deposited more than $700,000 in their personal checking accounts. In addition, checks representing thousands of dollars were drawn payable to the San Gerónimo Condominium Association, to the management of the Park Avenue and Sutton House apartments, to Emperor's Equities, casinos, and credit card companies. Charles Unanue signed virtually all the checks.

C. **Spain Transactions**

In May 1972, Liliane Unanue acquired a real estate villa in Fuengirola, Province of Málaga, Spain. She paid for the property in installments over a period of four years, ending in 1976. Defendants testified that Liliane Unanue paid for the property with her own funds. There is no documentation confirming the source of the money.

Unanue's equity in his Merrill Lynch accounts was approximately $2.5 Million.

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D. **France Transactions**

In 1985, the Société Hermitage Global, a Panamanian corporation owned solely by Liliane Unanue, bought an apartment in Paris, France. The apartment was subsequently transferred to Liliane Unanue.

II.

A. **Kalif Trading as Charles Unanue's *alter ego***

Goya seeks to impose liability on Kalif Trading for the judgment it obtained against Charles Unanue in the New Jersey Superior Court, contending that the corporation is an *alter ego* of Charles Unanue. It requests that we pierce the corporate veil and impose Charles Unanue's obligation on Kalif Trading.

1. **Governing Law**

Because Kalif Trading was involved in transactions in New York and Puerto Rico, we are faced with the threshold issue of which state law applies to this issue. Where the court's jurisdiction over the asserted claim arises

from the diversity of the parties, as in this case, the court applies the rules regarding choice of law of the forum state. In re Dupont-Benlate Litigation, 877 F. Supp. 779, 783 (D.P.R.. 1995). In Puerto Rico, courts have applied the "most significant contacts" test in cases involving tortious damages, contractual breaches, and the judicial process of piercing the corporate veil. A.M. Capen's Co. v. American Trad. & Prod. Corp., 74 F.3d 317, 321 (1st Cir. 1996); Wadsworth, Inc. v. Schwarz-Nin, 951 F.Supp. 314, 320-21 (D.P.R. 1996); Fornaris v. American Surety Co., 93 D.P.R. 29 (1966). Among the contacts to consider are the parties' place of incorporation and of business, the place where the injurious conduct occurred, the place where the injury materialized, and the place where the relationship between the parties is centered. 953 F.Supp. at 321-22.

In this case, Goya alleges that Charles Unanue has used Kalif Trading to launder his personal funds and conduct his personal business. Goya has presented

documentary evidence that in November 1980, Charles Unanue transferred all the securities in his E.F. Hutton account in New York to a newly-opened E.F. Hutton account also in New York and registered in the name of Kalif Trading. In addition, New York was the center of Kalif Trading's banking transactions, from where Charles Unanue issued checks in the corporation's name and where the corporation's funds were located. It also appears that Charles Unanue paid for the Sutton House apartment and for maintenance payments of the Park Avenue apartment with Kalif Trading's funds located in New York. From these facts, we find that New York has more significant contacts with the matter at hand than any other possible jurisdiction. Therefore, New York law will govern our determination of whether to pierce the corporate veil in this case.

2. Piercing the Corporate Veil

It is a well-established principle of corporate law that "a corporation exists independently of its owners, as a separate legal entity, . . . and that it is perfectly legal to incorporate for the express purpose of limiting the liability of the corporate Owners." Morris v. Department of Taxation, 623 N.E.2d 1157, 1160 (N.Y. 1993). Courts have found, however, circumstances that require the piercing of the corporate veil in order to prevent fraud or achieve equity. State of New York v Easton, 647 N.Y.S.2d 904, 908 (N.Y. Sup. Ct. 1995). There exist two modalities for piercing the corporate veil. One is the classic piercing of a corporation's charter to impress the debts of a corporation upon its owners. The other, which is the one sought by Goya, is available when the court disregards the corporate form to reach the assets of a corporation for the debts of its owners. This modality is known as reverse piercing. Id. at 908-09. See generally, 1

W. Fletcher, Cyclopedia of the Law of Private Corporations §§ 41-41.10, 41.70 (rev. perm. ed. 1990).

Regardless of the modality used, courts will evaluate the attendant facts and equities of each case in deciding whether to disregard the corporation's separate identity, since piercing the corporate veil has been characterized as an equitable remedy. David v. Glemby Co., Inc., 717 F. Supp. 162, 166 (S.D.N.Y. 1989); Easton, 647 N.Y.S.2d at 908. And because of the equitable nature of the remedy, the court will intervene even if the alleged wrongdoer is not a legal owner of the corporation but an equitable one, as alleged in this case. Id. at 909. Although no bright-line rules govern the different circumstances when courts will deny corporate independence, courts have generally required a showing that: "(1) [T]he owners exercised complete domination of the corporation in respect to the transaction attacked; and, (2) that such domination was used to commit fraud or wrong against the

plaintiff which resulted in plaintiff's injury." Easton, 647 N.Y.S.2d at 908, citing Morris, 603 N.E.2d at 1161.

Here, we must start by expressing that the story of Kalif Trading and the accounts surrounding what appears to be its fictional owner, Mr. Mohammed Kalif, are incredible. Charles and Liliane Unanue testified that Mr. Kalif is an old friend of Mrs. Unanue's family. He supposedly is a wealthy octogenarian Arab with unknown address somewhere in the Middle East. The Unanues allegedly have met up with him in such far away locations as Istanbul and Beirut. In spite of the bulky binders of exhibits that the defendants have submitted and the many discovery requests made by Goya, the defendants have not provided a scintilla of evidence as to Mr. Kalif's existence or whereabouts. Goya tried to contact Mr. Kalif through an attorney in Istanbul, with no results. The voluminous trial record before us contains only one document, a 1979 bank account signature card from the Dresdner Bank, bearing a

purported signature of Mr. Kalif. At trial, Charles Unanue admitted, however, that he may have signed the name himself.

During the 1970's, Mr. Kalif allegedly transferred approximately two million dollars to Charles Unanue and instructed him to invest the money in Charles Unanue's name. At the time, Mr. Kalif desired to invest in the United States, but did not want the funds and investments that Charles Unanue was handling to be traced to him. Although Mr. Kalif wanted to remain anonymous, in June 1979, Charles Unanue traveled to Panama for the purpose of incorporating Kalif Trading, a company whose namesake was precisely Mr. Kalif. Days after its incorporation, the company issued general and unrestricted powers of attorney to Charles and Liliane Unanue, and to Mr. Kalif. Charles Unanue has been the only one who has used his power of attorney extensively to manage all the company's accounts.

The largest of these accounts was the investment account maintained at E.F. Hutton. The trading records for this account demonstrate that Charles Unanue must have spent a considerable amount of time making investment decisions and dealing with brokers, and yet Charles Unanue did not receive any compensation for his efforts. To the contrary, the Unanues testified that when Charles Unanue allegedly became insolvent, they were forced to borrow money from Mr. Kalif. However, there is no documentation to sustain that any bona fide lending ever occurred.

On the other hand, there is documentary and circumstantial testimonial evidence that Mr. Kalif is a fictional character and that Kalif Trading is the mere *alter ego* of Charles and Liliane Unanue. There appears to be no geographical limitation on Charles Unanue's empowerment to act on behalf of the company. He has managed the company's accounts in America, as well as in Europe.

Charles Unanue used his address in Fuengirola, Spain, as the company's address on all bank and securities accounts. Charles and Liliane Unanue are named on the various opening and signature documents for Kalif Trading's accounts.

The evidence, further shows that Charles Unanue managed the company without ever keeping a proper set of financial books and records. There is only one corporate meeting reflected in the company books. This meeting took place in 1983 in Panama. Charles Unanue served as president and Liliane Unanue as secretary of the corporation. At this single meeting, Liliane Unanue was named secretary of Kalif Trading and Mr. Kalif was named president and director. Two other directors, Mr. Said Nazif Ibrahim and Mr. Mehdat Nabih Fakim, were appointed. The existence and whereabouts of these two gentlemen remain as unknown as that of Mr. Kalif. When Charles Unanue was confronted with the prospect of providing

evidence about Mr. Kalif in this litigation, Mr. Kalif supposedly removed himself from the directorship of Kalif Trading and turned over the company to Liliane Unanue in 1996. Mrs. Unanue then named herself president and treasurer of the corporation.

In conclusion, we find that Charles Unanue is the equitable owner of every asset nominally held in the name of Kalif Trading, to wit, the bank and securities accounts and Penthouse 11B at San Gerónimo Condominium. Since the corporation's creation in 1979, Mr. Unanue has exercised complete dominion and control over the corporation's assets and has intermingled his financial affairs with those of the Panamanian corporation.

B. Assets in Liliane Unanue's Name

Goya also contends that Charles Unanue is the beneficial owner of substantially all the assets held in his wife's name. Charles and Liliane Unanue claim that she is the sole proprietor of all the residences that Goya claims

belong to him. Liliane Unanue claims to be independently wealthy and tried to prove that she alone purchased the residential properties in Puerto Rico, New York, Spain, and France.

After careful consideration of the trial record, we find that Liliane Unanue, like Mr. Kalif, is an *alter ego* of Charles Unanue. In considering whether Liliane Unanue is Charles Unanue's second self, we found no applicable New York or Puerto Rico case law. These two jurisdictions have the most significant contacts with the issue at hand, and New York and Puerto Rico law can best assist in our analysis. A.M. Capen's Co., 74 F.3d at 322. We consequently borrow with modifications the analysis applied in the New York corporate *alter ego* cases discussed previously, as well as bankruptcy precedent where the debtor has transferred assets with the intent of defrauding. creditors, 11 U.S.C. § 727(a) (2) (1988). This court has considered such factors as the control that Charles

Unanue has exercised over Liliane Unanue's properties, the benefit and use of Liliane Unanue properties by him, the manner in which he treated the properties, and the consideration that Liliane Unanue provided for the properties. See Salomon v. Kaiser, 722 F.2d 1574, 1582 (2d Cir. 1983) (insolvent debtor purchased two homes with his own money, but had title to both placed in the name of his wife, who provided no consideration for the transfer, and debtor continued to retain possession, benefit, and use of the properties and treated them as his own, thus establishing a scheme to defraud creditors); EFA Acceptance Corporation v. Cadarette, 601 F.2d 648, 651-52 (2d Cir. 1979) (bankrupt transferred car, boat, and trailer to his fiancée without consideration some three weeks prior to filing for bankruptcy and continued to use the property, demonstrating intent to shield assets from creditors); In re Bottone, 209 B.R. 257 (Bankr.D.Mass. 1997) (material question of fact existed as to whether debtor, by continuing

to reside rent-free in home which he had conveyed to his wife, was effecting a continuing concealment of his interest in home, precluding summary judgment in proceeding brought to deny debtor's discharge).

As much as we liberalized the constraints imposed upon Liliane Unanue in the context of her default, the origins of Mrs. Unanue's wealth are totally unverifiable. Neither Charles nor Liliane Unanue have any documentation to prove that her wealth ever existed.

Liliane Unanue's family was allegedly an affluent Bulgarian family (the Dalkalovs) who suffered the hardships of World War II, but who managed nevertheless to remove part of their wealth and properties from their war-torn country before the Communists took over. However, the only documentary evidence of- the existence of this wealth was provided by Mrs. Vivian Schultz, Liliane's sister, who located and produced at trial certain bank books relating to savings accounts held in a bank in

Sophia, Bulgaria, before World War II. The accounts were in the names of Liliane's father, mother, and Mrs. Schultz. The amounts that appear deposited are modest in comparison to the alleged family fortune and there is no explanation as to how these funds were ever transferred outside of Bulgaria.

At trial, Liliane Unanue testified that during the 1950's and 1960's, her mother gave her substantial family assets which included cash, jewelry, gold bullion, artwork, furniture, and antiques. Owing to the fact that such bestowal occurred decades ago, she was allegedly unable to provide even an estimate of her wealth at any time, either in the United States or Europe. However, her sister Vivian, older than Liliane and who allegedly received cash from her mother on or about the time that Liliane Unanue did, was able to recollect, out of memory, that between 1956 and 1978, she brought into the United States approximately $200,000. There is no documentation of any of the assets

transferred or imported into the United States, although Liliane Unanue and her former husband, Mr. William Bates, testified that she did bring some furniture, artwork, and antiques into this country. The total absence of documentation or verifiable information as to the sources of Liliane Unanue's alleged wealth stands in stark contrast to the bulk of photocopies of hotel bills and airplane ticket receipts that the Unanues have furnished to prove that their lifestyle drained them of all their liquid assets.

An attempt to account for Mrs. Unanue's wealth is contained in two documents submitted by Goya. The first is a form providing financial information to Merrill Lynch in November 1977. The form indicates that Liliane Unanue's net worth at the time included just $128,000 in securities. She made no mention of any of the property that her mother allegedly gave her. The second document, prepared only a year later and signed by Charles Unanue on Liliane Unanue's behalf, is a certified financial statement

that Mrs. Unanue submitted to Citibank. Mrs. Unanue represented that she had cash in the amount of $37,000, securities totaling over $500,000, jewelry with an estimated value of $72,300, artwork of $133,400, and her furniture and antiques of $117,000. No mention of the gold bullion was made. These documents do not aid us in determining the sources of Liliane Unanue's independent wealth. By 1977, Charles Unanue had already received all the settlement payments from Goya. Therefore, Liliane Unanue's assets could have very well been provided to her by Charles Unanue and not by her parents as alleged.

In spite of her purported wealth, Mrs. Unanue never invested in real estate prior to marrying Charles Unanue in 1967. Although she had lived in the United States since the late 1950's, she never owned any real property in this country. Yet, suddenly, one year after her marriage to Charles, Mrs. Unanue began her acquisition of several residences here and abroad. As with the story of Mr. Kalif,

we are again confronted with defendants' bare allegations, a dearth of documentation, and the incorporation of entities for the only apparent corporate purpose of concealing assets, making it very difficult to give credibility to defendants' version of facts.

As to the three apartments located in Puerto Rico, it appears that Liliane Unanue incorporated Emperor Equities for the only purpose of transferring title to the Puerto Rico apartments. The first of these apartments was Apartment 5A, San Gerónimo Condominium, which the Unanues bought in 1968. During trial, the Unanues admitted that they transferred Apartment 5A to Emperor Equities in 1971 to avoid any claim that Charles Unanue had an interest in the San Gerónimo apartment. That being the case, such sale never came into existence under Puerto Rico contract law. Article 1213 of the Puerto Rico Civil Code bases a valid contract on "(1) [t]he consent of the contracting parties; (2) (a] definite object which may be the subject of

the contract; (3) [t]he cause for the obligation which may be established." 31 L.P.R.A. § 3391 (1990). The Civil Code states further that "[c]ontracts shall be binding . . . provided the essential conditions required for their validity exist." 31 L.P.R.A. § 3451 (1990). A contract that lacks any of these necessary elements is null from its inception and, therefore, the statute of limitations does not affect it. Rodriguez v. Sucesión Pirazzi, 89 D.P.R. 506, 547 (1963). "Contracts without consideration or with an illicit one have no effect whatsoever. A consideration is illicit when it is contrary to law and good morals." 31 L.P.R.A. § 3432 (1990). The sale contract of Apartment 5A lacked consideration. Charles Unanue never received any type of consideration for the sale of the property. The sale of the property was plainly a scheme to prevent anyone from discovering or attaching Charles Unanue's interest in the property.

By November 1972, when Charles Unanue had already received more than $500,000 in cash payments from Goya, Emperor Equities had purchased two more apartments at San Gerónimo for a total of $220,000. Although there is no evidence as to who exactly provided the funds for the purchase of these apartments, it can be inferred that Charles Unanue did with the proceeds received from Goya, especially since Liliane Unanue has been unable to provide any evidence as to her financial means for such investment. Our inference is supported by the 1978 financial statement that Charles Unanue submitted to Citibank. In that statement, Mr. Unanue listed a $223,000 loan receivable from Emperor Equities.

Four years after the purchase of the San Gerónimo apartments, Liliane Unanue bought the Park Avenue apartment for the nominal amount of $28,000. Despite all her professed wealth, she was forced to borrow money from Citibank to pay for the apartment, allegedly because

she had no liquid assets. Again, it remains a mystery who ultimately paid for it, if not Charles Unanue, who by that time had received the millionary payments from Goya.

Charles Unanue, and not Liliane, also appears to be the *de facto* owner of the house in Fuengirola, Málaga, Spain, and the Paris apartment. Liliane Unanue contracted to acquire the Spanish property when Charles Unanue had already received over $100,000 from plaintiff. As to the Parisian apartment, once more we find a Panamanian corporation as purchaser of the real property, which was eventually transferred to Liliane Unanue's name. There is no documentary evidence that Mrs. Unanue paid for these residences out of her own funds, as defendant adamantly claims. Defendant points to the monies derived from the selling of Liliane Unanue's furniture, jewelry or art as the source of funding for these purchases, but loses sight of the fact that these sales took place in the 1990's, two decades

after the Spanish house was bought and one decade after the Paris apartment was purchased.

In sum, the credible evidence in this case points to the fact that Charles Unanue paid for the properties held in Liliane Unanue's name with the payments he received under the 1972 Agreement and 1974 Amendment. Charles Unanue's defense that the purchase funds derived from gifts Liliane Unanue received from her well-to-do Bulgarian family is uncorroborated by evidence other than Charles and Liliane Unanue's testimony. While the testimony of a credible witness may be sufficient to prove a point, here the lack of documentation, coupled with the incredible account surrounding Mr. Kalif and his unusual relationship with the Unanues, does not allow us to give credibility to the claimed Daskalov fortune. Given the testimonies of Mrs. Schultz and Mr. Bates, it is not difficult to accept that the Daskalovs were an upper middle-class family that managed to remove from their country

sufficient funds to relocate elsewhere. But it is too much to ask that we give credibility to the account of the magnitude of the Daskalov wealth without any evidence as to how much it was and how it was invested, managed, and kept.

In addition, Charles Unanue has benefitted from the use and enjoyment of all these residences, and in many occasions referred to them as his own in letters to third parties. He also contributed to the maintenance of these properties throughout the years. We cannot countenance Charles Unanue's device of hiding his assets in the name of his wife for the purpose of impairing his creditors.

III.

In light of the foregoing, judgment shall be entered in favor of Goya Foods, Inc., and against Charles Unanue and his alter egos, Kalif Trading, Inc., and Liliane Unanue, allowing plaintiff to execute the New Jersey $6.9-Million judgment against the defendants' properties described here.

Because Kalif Trading is Charles Unanue's *alter* ego, a money judgment shall be entered by this court against Kalif Trading in the full amount for which Charles Unanue is indebted to Goya as ordered by the New Jersey courts, including Goya's right to execute judgment over Penthouse 11B, San Gerónimo Condominium, 860 Ashford Avenue, San Juan, Puerto Rico.

Regarding Liliane Unanue, the court recognizes plaintiff's right to execute judgment over the properties known as the Sutton Houses apartment in New York City and any residence registered to her name, including the Fuengirola, Málaga, Spain, villa and the Paris apartment.

The court also concludes that Charles and Liliane Unanue acted with intent to defraud creditors by transferring, removing, and concealing property, records, information, and other financial information.

Attorney's fees and costs are imposed upon the defendants. Final execution of judgment will not be

authorized until this case is reviewed by the U.S. Court of Appeals, First Circuit, and the New Jersey Supreme Court addresses the merits of the pending appeal, and only if the result is favorable to Goya, unless good and sufficient surety is posted.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 31st day of October, 1997.

s/
JOSE ANTONIO FUSTE
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GOYA FOODS, INC.	:	
Plaintiff,	:	Civil No. 95-2411(JAF)
v.	:	
ULPIANO UNANUE CASAL, a/k/a CHARLES UNANUE; LILIANE UNANUE, and KALIF TRADING, INC.	:	
Defendants.	:	

JUDGMENT

On the basis of the Memorandum Opinion, Findings of Fact, Conclusions of Law, and Order subscribed by the court today, Judgment is entered in favor of Goya Foods, Inc., and against Charles Unanue and his *alter egos,* Kalif Trading, Inc., and Liliane Unanue, allowing plaintiff to execute the New Jersey $6.9-Million judgment against the defendants' properties described in said opinion and order.

Because Kalif Trading is Charles Unanue's *alter ego,* a money judgment is entered by this court against Kalif Trading in the full amount for which Charles Unanue is indebted to Goya as ordered by the New Jersey courts, including Goya's right to execute judgment over Penthouse 11B, San Gerónimo Condominium, 860 Ashford Avenue, San Juan, Puerto Rico.

Regarding Liliane Unanue, the court recognizes plaintiff's right to execute judgment over the properties known as the Sutton House apartment in New York City and any residence registered to her name, including the Fuengirola, Málaga, Spain, villa and the Paris apartment.

Attorney's fees and costs are imposed upon the defendants. Final execution of judgment will not be authorized until this case is reviewed by the U.S. Court of Appeals, First Circuit, and the New Jersey Supreme Court addresses the merits of the pending appeal, and only if the result is favorable to Goya, unless good and sufficient

surety is posted.

San Juan, Puerto Rico this 31st day of October, 1997.

s/
JOSE ANTONIO FUSTE
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GOYA FOODS, INC.	:	
Plaintiff,	:	
		Civil No. 95-2411(JAF)
v.	:	
ULPIANO UNANUE CASAL, a/k/a CHARLES UNANUE; LILIANE UNANUE, and KALIF TRADING, INC.	:	
Defendants.	:	

AMENDED JUDGMENT OF DECEMBER 14, 1998

On the basis of the Memorandum Opinion, Findings of Fact, Conclusions of Law, and Order subscribed by the court on October 31, 1997, judgment is entered in favor of Goya Foods, Inc., and against Charles Unanue and his alter *egos,* Kalif Trading, Inc., and Liliane Unanue, allowing plaintiff to execute the New Jersey $6.9-Million judgment against the defendants' properties described in said opinion

and order.

Because Kalif Trading is Charles Unanue's *alter ego,* a money judgment is entered by this court against Kalif Trading in the full amount for which Charles Unanue is indebted to Goya as ordered by the New Jersey courts, as outlined above, including Goya's right to execute judgment over Penthouse 11B, San Gerónimo Condominium, 860 Ashford Avenue, San Juan, Puerto Rico.

Regarding Liliane Unanue, the court recognizes plaintiff's right to execute judgment over the properties known as plaintiff's right the Sutton House apartment in New York City, represented by the proceeds of its sale up to $150,000, with interest from November 1995, and any residence registered to her name, including the Fuengirola, Málaga, Spain villa, and the Paris apartment. The stock certificates and shares of Emperor Equities, Inc. held in the name of Liliane Unanue can be the object of the execution of judgment allowed by means of this judgment. Said stock

and shares of Emperor Equities, Inc. shall be deposited with the Clerk of this Court within ten (10) days, to be held in custodia legis. Liliane Unanue shall not transfer or otherwise encumber said stock. The disposition contained in this paragraph is consistent with an order of even date, which is self-explanatory.

Final execution of judgment will not be authorized until this case is reviewed by the U.S. Court of Appeals, First Circuit, and only if the result is favorable to Goya, unless good and sufficient surety is posted.

San Juan, Puerto Rico, this 14th day of December, 1998.

s/
JOSE ANTONIO FUSTE
U.S. District Judge

United States Court of Appeals
For the First Circuit

No. 98-1553
No. 99-1307
No. 99-2056
No. 99-2211

GOYA FOODS, INC.,

Plaintiff, Appellee,

v.

LILIANE UNANUE and KALIF TRADING, INC.,

Defendants, Appellants.

ULPIANO UNANUE-CASAL,
a/k/a CHARLES UNANUE

Defendant.

No. 98-1554
No. 99-1308
No. 99-2057
No. 99-2212

GOYA FOODS, INC.,

Plaintiff, Appellee,

v.

ULPIANO UNANUE -CASAL,

a/k/a CHARLES UNANUE,
Defendant, Appellant.

LILIANE UNANUE and KALIF TRADING, INC.,
Defendants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO
[Hon. Jose Antonio Fuste, U.S. District Judge]

Before
Selya, Circuit Judge,
Wallace,* Senior Circuit Judge,
and Boudin, Circuit Judge.

Jan Alan Brody with whom Roger Juan Maldonado, Jared Forminard and Balber Pickard Battistoni Maldonado & Van Der Tuin, PC were on consolidated brief for defendants Liliane Unanue and Kalif Trading, Inc.

Ulpiano Unanue-Casal, a/k/a Charles Unanue, pro se.

David J. Eiseman, Jose-Manuel A. de Castro and Golenbock. Eiseman, Assor & Bell on consolidated brief for defendant Ulpiano Unanue-Casal, a/k/a Charles Unanue.

Ira Brad Matetsky, Legal Department, Goya Foods, Inc., with whom Arturo J. Garcia Sola and McConnell Valdes were on consolidated brief for plaintiff.

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* Of the Ninth Circuit, sitting by designation

November 28, 2000

BOUDIN, Circuit Judge. This case involves an effort by a judgment creditor to reach both certain assets of the debtor nominally owned by the debtor's wife, and all assets owned by the debtor's alleged corporate "alter ego," Kalif Trading, Inc. The judgment creditor is Goya Foods, Inc., a major business founded in the 1930s which is now a Delaware corporation with its principal place of business in New Jersey. The debtor is Ulpiano Unanue-Casal, known as Charles, and his bankruptcy estate. The factual background and prior proceedings are as follows.

From the late 1940s until 1969, Charles served as one of the chief officers of Goya, a company founded by his father. In June 1969, in a quarrel among family members, Charles was dismissed and litigation ensued. As a result of settlements in 1972 and 1974, Charles received more than $4 million from Goya and, in exchange, gave up

his interest in Goya. Charles also agreed not to bring any further claim or suit regarding his father's will or estate. The agreement provided for liquidated damages of twice the winning side's litigation expenses, including attorney's fees, if any signatory wrongfully initiated new litigation against another signatory.

In 1987, Charles made a claim for a share of the inheritance from his parents, and litigation in New Jersey state court followed, with his brothers seeking a declaration that Charles had no interest in either his father's estate or his inter vivos trust. In 1990, while the New Jersey litigation proceeded, Charles filed for bankruptcy in Puerto Rico, and his bankruptcy estate thereafter became a party to the New Jersey litigation. In February 1995, the New Jersey court entered a judgment against both Charles and his estate for about $6.9 million, representing liquidated

damages for Goya, a signatory of the 1974 settlement that Charles had violated by making his inheritance claims.[1]

Meanwhile, prior to this New Jersey judgment, Goya had begun adversary proceedings in Charles' bankruptcy case in Puerto Rico, asserting that Charles was concealing his own assets under the names of his wife, Liliane, and two other companies, Emperor Equities, Inc., a Delaware corporation wholly owned by Liliane, and Kalif Trading, a Panamanian corporation which was organized by Charles.[2] On September 12, 1995, the bankruptcy court dismissed Charles' bankruptcy case without granting him a

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[1] The New Jersey judgment was entered, In re Unanue, No. M-128817, slip op. (N.J. Super. Ct. Ch. Div. Feb. 23, 1995), and has since been affirmed, 710 A.2d 1036, 1041 (N.J. Super. Ct. App. Div.), cert. denied, 724 A.2d 801 (N.J. 1998).

[2] In 1991, after Emperor sold a piece of real property and proceeds were transferred to a Swiss bank account in Liliane's name, the bankruptcy court restrained remaining sales of real property pendente lite. See Quiros-Lopes v. Unanue-Casal (In re Unanue-Casal), 144 B.R. 604, 606-07 (D.P.R. 1992)

discharge. In re Unanue-Casal, No. 90-04490, slip op. at 5 (Bankr. D.P.R. Sept. 12, 1995)

In November 1995, nine months after obtaining the New Jersey judgment for $6.9 million, Goya brought the present action in federal district court in Puerto Rico against Charles, Liliane, and Kalif Trading, seeking to enforce the New Jersey judgment against Charles and against properties that Goya claimed belonged to Charles but were held in the name of Liliane or Kalif Trading. A ten-day bench trial ensued in the district court in July 1997, and both Charles and Liliane testified. On October 31, 1997, the court filed a lengthy decision in Goya's favor, Goya Foods, Inc. v. Unanue-Casal, 982 F. Supp. 103 (D.P.R. 1997). Clarifying amendments to the judgment followed on March 10 and December 14, 1998.

The district court concluded that Charles was the true owner of specified cash, securities and various real properties held in the names of Liliane, Emperor Equities,

and Kalif Trading. The court rejected as false assertions by Charles and Liliane that Kalif Trading was owned by a wealthy Arab (who did not appear at trial), and that a supposed fortune inherited by Liliane from her family accounted for various of the real properties held in her name.

The judgment, as finally amended, determined that Kalif Trading was Charles' alter ego and was therefore responsible for the New Jersey judgment to the full extent of its assets. As for Liliane, the court's judgment provided that Goya could execute only against the following: (1) the proceeds of the Sutton House apartment Liliane had earlier owned in New York but since sold; (2) "any residence registered to her name, including the Fuengirola, Malaga,

Spain villa, and the Paris apartment";[3] and (3) the stock of Emperor Equities, all of which was held in Liliane's name, and which the court directed Liliane to deposit with the court.

Charles, Liliane and Kalif Trading have now appealed from the district court's judgment. They contest the findings of fact and legal conclusions that led the district court to impose liability for the New Jersey judgment on property held in the name Liliane, Kalif Trading and Emperor Equities. They also contend that the statute of limitations and a contractual release debar Goya's claims and say that the district court committed various procedural errors. We consider the merits of those arguments that have not been forfeited.

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[3] Fairly read, the judgment encompasses another New York apartment on Park Avenue which was the subject of evidence at trial and was held in Liliane's name at the time of the judgment. Apart from these three real properties, it is not clear what other real property held in Liliane's name at the time of the judgment was meant to be included.

1. Kalif Trading. It is easiest to begin with the district court's treatment of Kalif Trading, an off-shore company that Charles organized in 1979 and for which he and Liliane have had general power of attorney since incorporation. In November 1980, Charles transferred over $1 million to Kalif Trading in assets from his own securities account. At about this time, he ceased to pay alimony to a former wife and also stopped paying taxes, claiming that he no longer had any income or assets. In August 1983, Kalif Trading was also given title of a penthouse apartment in Puerto Rico previously held by Emperor Equities and apparently acquired with Charles' assets.

At trial, Charles claimed that Kalif Trading was owned by one Mohammed Kalif, but the court found that there was no evidence that Mohammed Kalif existed (he did not appear at trial), and that the company was a vehicle used by Charles to conceal his own assets This finding

was supported not only by Charles' effective control of the assets, but also by his use of Kalif Trading's bank accounts to pay hundreds of thousands of dollars in bills for Charles and his wife, by the transfer of assets from Charles to Kalif Trading, and by the timing of Kalif Trading's creation.

In imposing liability on Kalif Trading, the district court applied New York law, after finding that Puerto Rico courts would apply a "most significant contacts" test, A.M. Capen's Co. v. American Trading & Prod. Corp., 74 F.3d 317, 320 (1st Cir. 1996), and that New York's contacts with transactions involving Kalif Trading were greater than those of any other relevant jurisdiction. The brief filed for Liliane and Kalif Trading does not dispute the decision to apply New York law; Charles does so in his reply brief, but his arguments are terse, unpersuasive and too late. Rivera-

Muriente v. Agosto-Alicea, 959 F.2d 349, 354 (1st Cir. 1992).[4]

Under New York law, the corporate veil may be disregarded where the challenger shows two facts: (1) complete domination of the corporation by its alleged alter ego, and (2) use of that domination to commit a fraud or wrong against the plaintiff. Morris v. New York State Dep't of Taxation & Fin., 623 N.E.2d 1157, 1160-61 (N.Y. 1993); see also New York v. Easton, 647 N.Y.S.2d 904, 908 (N.Y. Sup. Ct. 1995). Although veil piercing is usually employed to make an individual or a corporate parent liable for the debts of a corporation, so-called "reverse piercing" (which makes the corporation liable for the debts of its

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[4] Panama, as the state of incorporation, may well supply the presumptively applicable legal regime for veil piercing claims; but under the Restatement rule, apparently followed in Puerto Rico, New York law could nevertheless be applied where, as here, Kalif Trading's business activities occurred primarily in New York and have no connection to Panama. See Wadsworth, Inc. v. Schwarz-Nin, 951 F.Supp. 314, 320-21 (D.P.R. 1996) (citing Restatement (Second) of Conflict of Laws § 309 (1971)).

owner or parent) is allowed under New York law where the assets at issue are held by the target corporation and the liability is that of the individual who dominates the corporation and is using it to perpetrate a fraud or wrong. Wm. Passalacqua Builders. Inc. v. Resnick Develoners S., Inc., 933 F.2d 131, 138 (2d Cir. 1991).

It may be open to dispute whether Kalif Trading was initially formed for the purpose of shielding assets from Goya. Although the district court's decision so suggests, New York law requires "clear and convincing" evidence of such fraud, Lowendahl v. Baltimore & Ohio R.R. Co., 287 N.Y.S. 62, 76 (N.Y. App. Div.), aff'd, 6 N.E.2d 56 (N.Y. 1936), and such evidence seems lacking because Kalif Trading's formation and the transfer of Charles' assets to it took place after Charles' original litigation with Goya had been settled (in 1972 and 1974) and before Charles made his 1987 claim for a share of his parents' estate.

Nevertheless, even if Kalif Trading's origin is not tainted by fraud, New York still permits veil piercing where the corporate vehicle is being used to inflict "wrongful or inequitable consequences." TNS Holdinas, Inc. v. MKI Sec. Corp., 703 N.E.2d 749, 751 (N.Y. 1998). New York courts have held that this test can be satisfied when a corporation is "a mere shell dominated and controlled by another for the latter's own purposes."[5] Guptill Holding Corp. v. New York, 307 N.Y.S.2d 970, 973-74 (N.Y. App. Div. 1970), aff'd, 292 N.E.2d 782 (N.Y. 1972), is inapposite here because, given Charles' denial of ownership of Kalif Trading, there is no easy way for Goya to levy directly on Charles' formal ownership interest in Kalif Trading.

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[5] 888 7th Ave. Assocs. Ltd. P'ship v. Arlen Corp., 569 N.Y.S.2d 16, 17 (N.Y. App. Div. 1991); see also National Union Fire Ins. Co. v. Bodek, 705 N.Y.S.2d 42, 43 (N.Y. App. Div. 2000); Austin Powder Co. v. McCullough, 628 N.Y.S.2d 855, 857 (N.Y. App. Div. 1995).

There is ample proof that Kalif Trading is effectively the alter ego of Charles--who created it, initially funded it with his own assets, managed it, and paid his own and his wife's expenses with its assets. Whether or not it was originally created to shield assets from creditors, it is not a business separate from Charles, and there is no indication it has any owners other than Charles. It appears to us, as to the district court, to be nothing other than Charles himself under another name, and therefore under New York law it is permissible to strip away the corporate fig leaf.

2. Assets in Liliane's Name. The claim as to Liliane's assets is more complicated. In 1968, Liliane and Charles took joint title to an apartment in San Juan, Puerto Rico, and in 1971, during the earlier round of litigation between Charles and Goya, the title to the apartment was transferred to Emperor Equities, Inc., a Delaware corporation wholly owned by Liliane. During and after 1972, the year in

which Charles received the first installment of payments from Goya, Liliane and Emperor Equities developed a pattern of real estate acquisitions in which they obtained title to other luxury residences in Puerto Rico, New York, France, and Spain.

At trial, Liliane claimed that these properties had been acquired with assets provided by her once wealthy Bulgarian family. However, the district court concluded that this story was untrue, being uncorroborated and inconsistent with other evidence. It also concluded that the properties in question had been purchased by Charles, who used and enjoyed all of the residences "and in many occasions referred to them as his own in letters to third parties." Goya Foods, 982 F. Supp. at 112. In substance, the court found that Charles was "hiding his assets in the name of his wife for the purpose of impairing his creditors." Id.

Liliane's brief makes no persuasive attack on the district court's findings, which we find were adequately supported. Rather, the brief concentrates its criticism on the district court's theory of liability. Because the district court described Liliane as Charles' "alter ego" in relation to the acquisitions, Liliane says that the district court wrongly applied to a human being a theory that is only valid in relation to corporations. See, e.g., Werner-Jacobsen v. Bednarik, 946 P.2d 744, 747-48 (Utah Ct. App. 1997) ("An individual cannot be the 'alter ego' of another."). Further, says Liliane, property held in her name belongs to her "even if it were assumed that Liliane obtained her properties with Charles' money and not with her own . . . ."

The district court's use of the "alter ego" language to describe the relationship between Charles and Liliane may be inapt--no New York decision appears to use it in such circumstances--and in New York the property of one spouse certainly is not automatically subject to seizure for

the debts of the other spouse. But New York courts have used the equitable theory of "constructive trust" to allow a third-party creditor to execute judgment on assets nominally owned by someone other than the debtor but, based on the court's findings, actually owned by the debtor himself.[6] It appears to us that, in using the alter ego language, the district court meant only that the properties in question were Charles' property but were merely held in his wife's name.

In some circumstances, even an intended transfer of ownership can be set aside. For example, if a specific transfer from one spouse to another were made without consideration to defraud a creditor, a different set of New York doctrines ("actual or constructive fraud") could be invoked, see Scola v. Morgan, 412 N.Y.S.2d 893, 895

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[6] Duncan v. Laury, 292 N.Y.S. 138, 139-41 (N.Y. App. Div. 1937); cf. Tesmetges v. Tesmetges, 47 B.R. 385, 390-91 (E.D.N.Y. 1984). See generally Latham v. Father Divine, 85 N.E.2d 168, 170 (N.Y. 1949)

(N.Y. App. Div. 1979); 30 N.Y. Jur. 2d Creditors' Rts. & Remedies §§ 300-71 (1997); but in this case there are no detailed findings with respect to each of the individual transactions at issue that would establish fraudulent intent, see In re Montclair Homes, 200 B.R. 84, 96 (E.D.N.Y. 1996), or constructive fraud, see N.Y. Debtor & Creditor Law 55 273-75 (McKinney 1990), nor did the district court purport to make such findings.

However, under the theory of constructive trust, no such specific findings are required if the purchases were with Charles' own funds, the transfers of title to Charles' wife Liliane were merely nominal, and the parties intended that Charles continue to possess beneficial ownership of the properties. See Bankers Sec. Life Ins. Soc'v v. Shakerdae, 406 N.E.2d 440, 440 (N.Y. 1980). This, in substance, is what the district court found. It does not make Liliane personally liable for her husband's debts; but it does mean that the property which he beneficially owns but which

happens to be held in her name can be reached through the constructive trust doctrine for the benefit of his creditors.

Here, the circumstantial evidence of an implicit understanding is strong. The timing of the transactions in relation to prospective litigation, Charles' continued treatment of the properties as his own, the parallels to the deceptive operation of Kalif Trading, and the inferences to be drawn from Liliane's baseless claim that the properties were paid for with family funds all contribute to the conclusion that the real estate in question was Charles' and not Liliane's. Given that Charles and Liliane's "agreement" could be inferred from the circumstances, see In re Estate of Knappen, 655 N.Y.S.2d 110, 111-12 (N.Y. App. Div.), cert. denied, 683 N.E.2d 335 (N.Y. 1997), there is enough to sustain the district court's assessment of the situation under a clear error standard.

Two New York cases, not cited by the parties, make clear that a constructive trust is not automatically justified

to undo a property transfer between spouses even when the purpose of the transfer (in each case, one involving the marital residence) is to protect against present or future claims by the creditors of the transferring spouse.[7] However, those cases are distinguishable for they involved what the New York courts found to be genuine transfers that occurred without an understanding between the parties that the property would remain that of the transferring spouse. In our case, by contrast, the thrust of the district court's findings is that ownership was conveyed in name only.

This lack of an effective conveyance (and the resulting applicability of constructive trust theory) also answers the argument of Charles and Liliane that the statute of limitations bars the effort to reach property held in Liliane's name. Although the New York statute of

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[7] Macina v. Macina, 455 N.E.2d 1258, 1259 (N.Y. 1983), aff'd 463 N.Y.S.2d 43 (N.Y. App. Div. 1983); Rossignol v. Silvernail, 635 N.Y.S.2d 772, 773 (N.Y. App. Div. 1995).

limitations requires that suit based on fraudulent conveyance be brought within six years of the transfer or two of discovery (actual or constructive) of the fraud, Wall St. Assocs. v. Brodsky, 684 N.Y.S.2d 244, 248 (N.Y. App. Div. 1999), that is not the theory of recovery. In the case of a constructive trust, the limitations period (six years, Maric Pining. Inc. v. Maric, 705 N.Y.S.2d 684, 685 (N.Y. App. Div. 2000)) begins to run only when "the wrongful withholding" occurs, Augustine v. Szwed, 432 N.Y.S.2d 962, 965 (N.Y. App. Div. 1980); accord Whalen v. Gerzof, 564 N.E.2d 656, 657 (N.Y. 1990), and the original date of transfer is not relevant.

The district court's rationale justifies its judgment to the extent that it recognizes Goya's right to execute against the identified real property held in Liliane's name, specifically, the three named properties in New York, Paris, and Malaga. However, despite its broad literal wording, Goya Foods, 982 F. Supp. at 112, we do not construe the

district court judgment as extending to any residence held in Liliane's name that has not yet been identified in this litigation. The constructive trust doctrine cannot easily be applied to property whose identity and circumstances of acquisition are unknown.

3. Emperor Equities. Next, we consider the various issues raised by Liliane's ownership of Emperor Equities. One set of the real properties at issue were three condominium apartments in Puerto Rico. One was acquired by Charles in 1968, title being taken in the joint names of Charles and Liliane; in 1971, during Charles' litigation with Goya, this property was transferred to Emperor, a corporation whose sole shareholder was Liliane. Two further condominiums in San Juan were acquired in 1972, after Charles received a large initial payment from Goya. They too became properties of Emperor. One was transferred in 1983 to Kalif Trading,

but the other remained in Emperor's name until being sold to a third party in 1991.

Despite its involvement in Charles' and Liliane's real estate transactions, Emperor was not named as a defendant in Goya's district court action seeking to reach assets of Charles held in the names of third parties. Liliane says that this is because Emperor was a Delaware corporation and, as this was also true of Goya, naming Emperor as the defendant would have destroyed diversity jurisdiction. Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267 (1806). Liliane says that it was an error for the district court to order Emperor, a non-party to the litigation, to forfeit its property, since Emperor was not itself a party to the case.

The short answer is that the district court judgment did not purport to reach properties held by Emperor at all. Instead, as clarified by the amended judgment of December 14, 1998, the district court directed that the "stock

certificates and shares" of Emperor held by Liliane (it is unclear why both words were used) should be deposited with the court so that they could be used to satisfy the judgment. Such a judgment was within the district court's power, for Liliane was a party to the case, and reaching securities that she owns does not require that the securities' issuer be a party.

4. Miscellany. There remain two other arguments of importance. First, in his opening brief on appeal, Charles claims that, in seeking to enforce the New Jersey judgment, Goya overlooked a procedural precondition. Since the New Jersey judgment was not initially entered by another federal court, it could not merely be registered in the federal district court in Puerto Rico under 28 U.S.C. § 1963 (1994). Rather, enforcement was governed by Fed. R. Civ. P. 69(a), providing that federal proceedings to enforce any out-of-state judgment of a state court should

follow the practice of the state in which the federal district court sits.

Charles asserts that, under Puerto Rico law, for a foreign judgment to be enforceable in Commonwealth courts, it must first be validated and domesticated in an "exequatur" proceeding in the Superior Court of Puerto Rico. Ex parte Marquez Estrella, 128 D.P.R. 243, 247-56 (1991). This proceeding allows interested parties to raise certain limited defenses against the enforcement of a foreign judgment. Charles says that Goya failed to have the New Jersey judgment validated in this manner, that the New Jersey judgment was therefore "not properly before the District Court," and that lack of an exequatur proceeding deprived Charles of his right to challenge validation of the judgment on the permitted grounds.

It may be (we take no position on the matter) that to enforce a state court judgment in the federal district court in

Puerto Rico, there must be a prior exequatur proceeding[8] or some equivalent opportunity to challenge the non-Commonwealth judgment in the federal proceeding itself. However, Charles and Liliane first made their exequatur argument in July 1999, more than a year and a half after the district court had initially entered judgment against them. Thus, this argument was not made in a timely fashion, whether viewed as subject to the ten-day rule of Fed. R. Civ. P. 59(e) or the more relaxed one-year or reasonable-time restrictions of Fed. R. Civ. 60(b).[9]

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[8] Compare Hibbs v. Yashar, 522 F. Supp. 247, 249-54 (D.R.I. 1981) (Rhode Island statute requiring preliminary judicial screening of medical malpractice cases), with Feinstein v. Massachusetts Gen. Hosp., 643 F.2d 880, 889 (1st Cir. 1981) (Massachusetts law requiring screening of medical malpractice claims by an administrative tribunal). See generally 19 Wright, Miller & Cooper, Federal Practice and Procedure § 4511 (1996).

[9] Neither of the amended judgments substantively altered the original judgment or provided any other excuse for the failure to raise the exequatur issue in timely fashion. See Berwick Grain Co. v. Illinois Dep't of Agric., 189 F.3d 556, 560 (7th Cir. 1999).

The exequatur objection is not one that goes to the district court's subject matter jurisdiction and which might therefore be exempt from the ordinary requirements of timeliness. See Sea-Land Serv.. Inc. v. Ceramica Europa II, Inc., 160 F.3d 849, 852 (1st Cir. 1998). Nor, it is worth adding, is there any indication that Charles and Liliane were precluded from raising in the district court any substantive objections to the enforcement of the New Jersey judgment that might have been asserted in a Commonwealth exequatur proceeding. Charles did claim that the New Jersey court lacked jurisdiction to enter the judgment against him, but he did not pursue this issue on appeal in his opening brief, and it is therefore forfeited.

Second, Liliane claims that the district court erred by entering a default judgment against her and, later, by not affording her a jury trial even though the court ultimately allowed her to present her case on the merits. The district court entered a default against Liliane in March 1997 as a

sanction for repeated failures to comply with court orders. Liliane's earlier demand for a jury trial was then struck on Goya's motion (no other party having made a timely request for a jury trial). Nevertheless, at trial the district court reversed field and allowed Liliane's counsel to offer witnesses and to present a defense, and it then resolved the claims against her on the merits. At no time during the trial did Liliane offer an objection to the bench trial or ask the court to reinstate her jury trial request.

On this appeal, little need be said about Liliane's challenge to the original default. Although the remedy was severe, it followed obstreperous acts and clear advance warning from the district court, and it was not an abuse of discretion. Cf. Faigin v. Kelly, 184 F.3d 67, 84 (1st Cir. 1999); John's Insulation, Inc. v. L. Addison & Assocs., Inc., 156 F.3d 101, 108-10 (1st Cir. 1998). The more troublesome question is whether, insofar as the district court proceeded to try and decide Liliane's case on the

merits, it should also have afforded her the jury trial she originally demanded. In posing this question, we assume dubitante that the original jury trial request was proper.[10]

Assuming that a right to jury trial otherwise existed, it was not preserved. Once the default was effectively withdrawn, Liliane could not proceed to present her case without telling the district court that she wanted the jury request reinstated and then, after losing, complain that a jury should have been afforded. This kind of mouse-trapping, whether deliberate or inadvertent, is forbidden. Daigle v. Maine Med. Ctr.. Inc., 14 F.3d 684, 687-88 (1st Cir. 1994). A claim to a jury trial can be forfeited just like any other non-jurisdictional request or objection.

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[10] Imposition of a constructive trust is equitable in nature and, thus, may not trigger the right to a jury trial under the Seventh Amendment. See Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 40-42 (1989); RTC v. Pasquariello, 16 F.3d 525, 531 (3d Cir. 1994); see also Latham v. Father Divine, 85 N.E.2d 168, 170 (N.Y. 1949) ("[A] constructive trust is merely the formula through which the conscience of equity finds expression . . . . (internal quotation marks and citations omitted)).

Appellants present other arguments, including claims that personal jurisdiction over Charles and Liliane was lacking, that Charles was denied adequate discovery, that Charles was entitled to rely on Liliane's request for jury trial, that (according to Charles) New York law does not apply, and that misconduct by Goya warranted sanction and dismissal. However, all of these claims have been raised only in reply briefs, and it is well-settled that the attempt to present issues in this manner is untimely and that such claims therefore need not be considered. Rivera-Muriente v. Agosto-Alicea, 959 F.2d 349, 354 (1st Cir. 1992).

Finally, the appellants argue that a 1974 contractual release given by Goya precludes Goya's present claims. This argument was admittedly not presented to the district court and is therefore forfeited in this court. It is doubtful that such a defense, if not seasonably asserted, could ever

be rescued by the plain error doctrine, but in any event there is no miscarriage of justice in its forfeiture here.

The appellants also have made, or at least insinuated, a variety of other arguments; to the extent these arguments are properly before us, we believe that they are without merit, and we reject them without detailed discussion. For the reasons stated, the judgment of the district court is affirmed with the clarification that insofar as the judgment permits Goya to levy against real properties held in Liliane's name at the time of judgment, it extends only to those real properties identified in the district court proceedings and not other unnamed properties. Appellants have pending a motion for reconsideration of our prior order striking various exhibits, and we now deny the motion to reconsider.

It is so ordered.

United States Court of Appeals
For the First Circuit

No. 98-1553
No. 99-1307
No. 99-2056
No. 99-2211

GOYA FOODS, INC.,

Plaintiff, Appellee,

v.

LILIANE UNANUE and KALIF TRADING, INC.,

Defendants, Appellants.

ULPIANO UNANUE-CASAL,
a/k/a CHARLES UNANUE

Defendant.

No. 98-1554
No. 99-1308
No. 99-2057
No. 99-2212

GOYA FOODS, INC.,

Plaintiff, Appellee,

v.

ULPIANO UNANUE -CASAL,

a/k/a CHARLES UNANUE,
Defendant, Appellant.

LILIANE UNANUE and KALIF TRADING, INC.,

Defendants.

JUDGMENT

Entered: November 28, 2000

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed with the clarification that insofar as the judgment permits Goya to levy against real properties held in Liliane's name at the time of judgment it extends only to those real properties identified in the district court proceedings and not other unnamed properties.

By The Court

Clerk.

United States Court of Appeals
For the First Circuit

No. 98-1553
No. 99-1307
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GOYA FOODS, INC.,

Plaintiff, Appellee,

v.

LILIANE UNANUE and KALIF TRADING, INC.,

Defendants, Appellants.

ULPIANO UNANUE-CASAL,
a/k/a CHARLES UNANUE

Defendant.

No. 98-1554
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GOYA FOODS, INC.,

Plaintiff, Appellee,

v.

ULPIANO UNANUE -CASAL,

a/k/a CHARLES UNANUE,
Defendant, Appellant.

LILIANE UNANUE and KALIF TRADING, INC.,

Defendants.

ERRATA

The opinion of this Court, issued on November 28; 2000, should be amended as follows.

On page 12, line 2 of 2nd paragraph, delete "the".

On page 14, line 6, delete "three named" and add "mentioned above" after "Malaga" and before the period.

On page 15, line 4, replace "the" with "a".

On page 17, line 5, replace "Fed. R. Civ. 60(b)." with "Fed. R. Civ. P. 60(b)."

United States Court of Appeals
For the First Circuit

Nos. 98-1553. 99-1307, 99-2056, and 99-2211

GOYA FOODS, INC.,
Plaintiff, Appellee,

v.

LILIANE UNANUE and KALIF TRADING, INC.,
Defendants, Appellants.

ULPIANO UNANUE-CASAL,
a/k/a CHARLES UNANUE
Defendant.

Nos. 98-1554, 99-1308, 99-2057 and 99-2212

GOYA FOODS, INC.,
Plaintiff, Appellee,

v.

ULPIANO UNANUE -CASAL,
a/k/a CHARLES UNANUE,
Defendant, Appellant.

LILIANE UNANUE and KALIF TRADING, INC.,
Defendants.

BEFORE
SELYA, Circuit Judge,
WALLACE*, Senior Circuit Judge,
BOUDIN, STAHL, LYNCH and LIPEZ, Circuit Judges.

ORDER OF COURT

January 5, 2001.

The panel of judges that rendered the decision in this case having voted to deny the petitions for rehearing and the suggestions for rehearing en banc having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeals be heard or reheard by the Court en banc,

It is ordered that the petitions for rehearing and suggestions for rehearing en banc, be denied.

By the Court:
PHOEBE D. MORSE, Clerk

By: Janice M. O/Neil
Chief Deputy Clerk

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* Of the Northern District of California, sitting by designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GOYA FOODS, INC.	:	
Plaintiff,	:	
		Civil No. 95-2411(JAF)
v.	:	
ULPIANO UNANUE CASAL, a/k/a CHARLES UNANUE; LILIANE UNANUE, and KALIF TRADING, INC.	:	
Defendants.	:	

ORDER THAT DEFENDANTS CHARLES UNANUE AND LILIANE UNANUE PERSONALLY APPEAR BEFORE THE COURT AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT

WHEREAS, by an Order Prohibiting Alienation of Properties of Defendants (Docket No. 5) and an Order Prohibiting Alienation of Cooperative Shares (Docket No. 9), each entered November 17, 1995 (the "Orders"), this Court prohibited the defendants in this action and their agents, employees, and all persons holding property for them or acting in concert with them, from alienating or in any way assigning, transferring, selling, or otherwise disposing of certain properties, specifically including Apartment 10A at 625 Park Avenue, New York, New York and the cooperative shares relating thereto ("Apartment

10A"), and both of the Orders have remained and continue to remain in full force and effect; and

WHEREAS, based upon Plaintiff's Emergency Motion for an Order Directing Defendants Charles Unanue and Liliane Unanue To Personally Appear before the Court and Show Cause Why They Should Not Be Held in Contempt of Court for Their Willful Violation of Two Orders of the Court, and for Other Relief (7' Plaintiff' s Motion"), filed by plaintiff Goya Foods, Inc. ("Goya") on October 16, 2000, and the exhibits annexed thereto, it appears that defendants may have sold and transferred the Apartment to a third party on or about June 19, 1998, and may thereby have violated the Orders;

NOW, THEREFORE, IT IS ORDERED that the prior order of this Court entered August 19, 1999, directing that no further papers be filed in this action pending resolution of defendants' appeals from this Court's judgment (Docket No. 323) be and is hereby modified to permit the filing of Plaintiff's Motion and all documents relating to the subject-matter thereof; and it is further

ORDERED that defendant Charles Unanue a/k/a Ulpiano Unanue-Casal and defendant Liliane Unanue each shall APPEAR PERSONALLY BEFORE THIS COURT, together with counsel if they be so advised, on the 31st day of October, 2000, at 9:30 AM o'clock, __.m., in Courtroom JAF at the United States Courthouse located at 150 Carlos Chardon Avenue, Hato Rey, Puerto Rico, and then and there SHOW CAUSE why they should not be held in CONTEMPT OF COURT for their knowing and willful violation of the Orders of this Court, and why the Court should not grant appropriate relief therefor; and it is further

ORDERED that any papers submitted by Charles

Unanue or Liliane Unanue or their counsel in opposition to Plaintiff's Motion shall be filed and served upon plaintiff's counsel to be received at least two business days prior to the hearing date; and it is further

ORDERED that service of a copy of this Order To Show Cause, together with a copy of Plaintiff's Motion, shall constitute service of process summoning Charles Unanue and Liliane Unanue to APPEAR PERSONALLY in court as directed herein, such that an appropriate warrant for their arrest and detention shall issue upon their failure to appear as directed; and it is further

ORDERED that plaintiff is granted leave to conduct appropriate discovery proceedings on an expedited basis in any judicial district, including the service of notices to defendants and third parties for the production of documents and for the depositions of defendants and third parties, relating to the transfer and sale of the Apartment, or any other conduct by any person or entity alleged by plaintiff to be in violation of the Orders or any other order of this Court or to have aided and abetted such violations; and it is further

ORDERED that defendants; comply with any document request served upon them pursuant to the preceding paragraph within five business days after service thereof; and it is further

ORDERED that the stay or execution of the Judgment of this Court dated October 31, 1997, as amended on March 10, 1998, and December 14, 1998, which stay was entered by this Court sua sponte pending resolution of defendants' appeals to the United States Court of Appeals for the First Circuit, be and it hereby is vacated effective at the close of business on the third business day following service of this

Order upon Charles Unanue and Liliane Unanue, unless within that time defendants pay the sum of $4,.600,000 into the Office of the Clerk of this Court, or, alternatively, post a bond or other good and sufficient security in an amount no less than $4,600,000, for the satisfaction of all judgments in plaintiff's favor against them in the event that the judgment of this Court is affirmed.

Entered at Hato Rey, Puerto Rico, this 20th day of October, 2000.

/s/
JOSE ANTONIO FUSTE
Unites States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

EXHIBIT
E

GOYA FOODS, INC., et al.,	.	Civil No. 95-2411
	.	
v.	.	Hato Rey, Puerto Rico
	.	October 31, 2000
CHARLES UNANUE AND LILIANE UNANUE, et al.,	.	
	.	
	.	
Defendants.	.	
. . . . .	./	

TRANSCRIPT OF HEARING ON ORDER TO SHOW CAUSE

BEFORE THE HONORABLE JOSE ANTONIO FUSTE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	ARTURO GARCIA SOLA, ESQ. JOAN MULET, ESQ. IRA MATETSKY, ESQ.
For the Defendants:	ALVARO CALDERON, ESQ. HAROLD VICENTE, ESQ.
Court Reporter:	Donna W. Dratwa, RMR, CRR

PROCEEDINGS

THE COURT: Let's call the case.

THE CLERK: For order to show cause, Civil95-12411, Goya Foods, Inc., et al., versus Charles Unanue, et al. Will the attorneys please come forward and identify themselves for the record.

MR. GARCIA: Good morning. Arturo Garcia Sola, representing Goya Foods, Inc., and together with Joan Mulet from McConnell Valdes, and Mr. Ira Matetsky, who is now legal counsel for Goya, and we are ready to proceed.

MR. CALDERON: I don't know if, this being Halloween, it may sound as trick or treat. We received yesterday several telephone calls, one from Jan Brody in New Jersey, and subsequently we received two calls from Mr. Unanue, requesting that we represent them. When I say "them," Mr. Unanue and Liliane, his wife. That's why they called two attorneys. We were very clear with Mr. Brody and Mr. Unanue that it was for us to even decide whether we would accept them as clients in such short notice. And we told them in no uncertain terms that we would not come to the court to tell the Court that we were representing them.

As a matter of fact, I don't know if we decided later whether we're going to represent them, whether I'm going to represent him or her. We haven't come to that point yet. So we explained to him that all we do today would be to explain to the Court the situation and ask the Court if the Court feels in its discretion that it can give the parties an additional time in order to allow us to see the

files and study and decide whether we are going to be attorneys or not. We really do not know whether we want to get involved in this case or not.

And this is the situation I have. Mr. Vicente may want to add something else.

MR. VICENTE: I have nothing further to add, Your .Honor. That is precisely the case. We would be asking the Court. If the Court feels that the defendants in this case should be represented by counsel, we would be willing to entertain that request, but unless the Court allows us some time, and that - and when 1 say "us," Mr. Calderon and myself - to become familiar with the client, with the case, sufficiently to provide the defendants effective legal representation. Unless the Court gives us that time, we will not represent anybody. If the decision of the Court is that the defendants will not be granted that additional time, then we will just ask to be excused and the case may proceed as Your 'Honor deems appropriate. Thank you.

MR. GARCIA: May we be heard.

THE COURT: Mr. Garcia.

MR. GARCIA: We understand the difficult situation in which brother counsel have been placed by the requests made 'yesterday at the 11th hour by Mr. Unanue and Mrs. Unanue, Mrs. Unanue's counsel before the First Circuit, Mr. Brody. However, the Court needs to be aware of the fact that, as usual, these types of requests come at the 11th hour.

Mr. and Mrs. Unanue were both personally served with a copy of the order to show cause on October 24th, at approximately 4:00 p.m. That was last Tuesday.

Last Tuesday. It was not until yesterday, sometime in the afternoon or morning that they contacted counsel in Puerto Rico, Mr. Calderon and Mr. Vicente.

The order made very clear that the defendants were both required to appear personally before the Court to attend to this matter. The order also made clear that if they so wish, they could also attend represented by counsel.

We understand that it is important in proceedings like this to have counsel present. But at the same time, Your Honor, we feel that the gravity of the situation is such that the Court cannot grant the extension requested by not even defendants, but by counsel who are considering the possibility of representing the defendants in the case. Defendants are now on notice that the Court is looking to enforce the orders. They're now on notice that we ire aware of the sale of the apartment.

If the defendant; are granted any more time, they can do exactly the same thing that they did with the apartment at 625 Park Avenue; they can continue to sell other assets, thereby making those assets unavailable for the ultimate execution of the judgment, if and when the Court of Appeals for the First Circuit affirms the decision of this court.

What we have is only an indication by potential counsel that they're considering the representation. We don't even have a commitment that these two counsel present here today will actually commit and represent the defendants. We understand from our informal conversations with counsel that counsel do not even know the whereabouts of the defendants at this time. They were reached by telephone call yesterday, and they do not know whether the defendants are in Puerto Rico, in New York, or

even in the United States, for that matter.

In one of the telephone conferences that I had yesterday with Mr. Calderon, at least at that time he was under the impression that they were away from the United States, in Europe. We contacted Mr. Brody yesterday to inquire from him whether or not the defendants would appear and whether he would appear. As you may recall, Mr. Brody was admitted pro hac vice to represent them in this case.

Although Mr. Brody did not subsequently appear on behalf of Liliane during the proceedings in the case, particularly the trial of the case, he has been her counsel now for a number of years, perhaps dating back to 1988, and is her current counsel in the proceedings before the Court of Appeals for the First Circuit. In that capacity we sent Mr. Brody last week, on October 24th, the very same day that the defendants were both personally served with a copy of the order to show cause and the other documents, which led to the order to show cause, with a copy of all of the documents filed with respect to the order to show cause.

We asked Mr. Brody yesterday whether the defendants were in Puerto Rico and whether they would show up for the hearing. No, they are not going to show up to the hearing, and B, I am not authorized to tell you where they are, even if I knew where they were.

So the situation is, Your Honor, that we do not know where they are. All we know is that they're not here today, that they once again have decided voluntarily, and I suspect under the advice of counsel, not to attend the hearing today and show cause as the Court ordered them to do.

In these circumstances, Your Honor, we respectfully submit that.--

The one week postponement that I believe you're asking for, correct?

MR. CALDERON: Whatever reasonable period of time the Court feels is appropriate.

MR. GARCIA: We do not even have before us a commitment by brother counsel that they will bring the defendants to court. They have not even met with them. They don't even know who they are. They have to wait for a phone call from them to communicate with them. We don't think that the defendants have even tried to comply with the order of this court, and in those circumstances, we just don't feel that the requested adjournment of time is warranted. Unless you have any other questions, Your Honor?

THE COURT: The situation is this. I understand fully the position assumed by counsel Calderon, and Vicente, and if I were them, I would not do more than they are doing. Simply, they are in a situation whereby they have not decided whether they should assume a representation, and they were responsible enough to at least show their face in court and tell us what's going on That's as much as you can expect from them under the circumstances. I would not expect anything else.

But there is a problem here. The problem that I have here is that there was an order entered by this court regarding disposition of assets, and the order was violated. We're not talking about the sale of a car; we're talking about the sale of an apartment for over $4 million. It's a

major thing, and the papers on record show that these monies were taken out of the country. These monies were transferred to some account in Europe -- in Switzerland as a matter of fact. And under those circumstances, I would have expected the defendants, the defendants, with or without counsel, to appear here today.

This record is full of instances in which these defendants, out of disrespect for orderly proceedings before a court of justice or because of the fact that they were proceeding pro se in many various instances in which they appeared, the truth of the matter is that they have not complied with a number of dispositions. And under these circumstances, the only thing that I find prudent to do is one of two things. Either forget about it and not enforce the order and just assume that they are incapable of complying and forget about it, simply, or just have them arrested. And I think that there are only two alternatives, and the alternative of choice is the order. We're going to enforce orders of this Court and not allow these things to happen in this case, or any other case.

The only other alternative is to order their arrest. So what I will do is this. I will ask the, clerk of court to issue an arrest warrant against these two individuals. I will sign that order, and that order will be processed through the US Marshal's Service, who in turn will deliver this order to US Immigration authorities, US Customs; authorities, et cetera, and to the United States Marshal's Service, and in the Southern District of New York, and that will be it.

There will be no bail, no bail posted, and upon their arrest, these individuals should be transferred to this district, and then I will set a hearing. This will give them the opportunity now of dealing with counsel and hiring local counsel, because the hearing won't be held today. I'm

just taking a preventive measure, basically to avoid further flouting of the orders of this Court. So that's exactly what I intend to do.

MR. GARCIA: Your Honor, there's something else. As part of the order to show cause that you entered in the case on October 16th, you lifted the stay of execution with respect to the other properties. The lifting of .the stay became effective.

THE COURT: The what became effective?

MR. GARCIA: The lifting of the stay with the other properties. So we have prepared a motion for execution of the judgment, particularly with respect to the penthouse B apartment at the Condominium San Geronimo, 86-I Ashford Avenue. We have the motion here, and we would be filing that, together with the order of execution and the draft of the writ for execution.

THE COURT: For the benefit of Mr. Calderon and Vicente, when I entered judgment in this case, I took the extraordinary measure, if you will, to basically protect the defendant's rights of not allowing the execution of the judgment, even though they were not posting bond, to stay the execution of judgment, waiting for the Court Of appeals to decide the issue. I became in essence their own lawyer in that sense, thinking that it would be a good thing to have the Court of Appeals express itself on these issues. Look what has happened. They have proceeded to turn around and sell the apartment. That is not an example of good faith. I cannot do anything other than order their arrest in these circumstances.

MR. GARCIA: In addition to that, Your Honor, we also served a request for production of documents and

information on the defendants, and we will be serving similar requests on third parties which we understand or who we understand aided and abetted the defendants in the violation of the order of this court.

THE COURT: Very well.

MR. CALDERON: So that we may inform these people in case they call again, are we to understand then that the plaintiff is proceeding with the execution of the judgment in spite of the fact that it is pending appeal?

THE COURT: The appeal has been argued. No decision has been rendered. I had stayed the execution, but in light of these circumstances, in light of the circumstance, I am proceeding with the execution because under federal law, if you don't post bond to stay the execution of judgment, even though the judgment is on appeal, can be executed.

MR. CALDERON: I just want to know what is the situation so that we can explain it to them.

THE COURT: The most explanation, Mr. Calderon, should be that if they are in Europe, with this arrest warranted, they're going to be extradited. If they are in the States, they won't be able to leave for Europe or anywhere else, because the US airports will know about the fact that there is an arrest warrant. If they are in Europe and they come back, they will be arrested upon arrival.

If a drug dealer cannot escape these consequences, I don't think they will either. It is very difficult in the modern world, the year 2000 kind of things, to avoid the effects of an arrest warrant of a federal court. And they should understand this.

MR. CALDERON: We will explain.

MR. GARCIA: If I can further explain to brother counsel.

THE COURT: Maybe now, maybe next month, maybe next year, but they're going to be caught and brought before me.

MR. GARCIA: At the time of the order to show cause presented by Your Honor, he lifted the stay, but he said if you post a bond of $4.6 million within three business days from the date that the order was served on - - personally on you, then we will continue the stay of execution of the judgment.

The three days expired on Friday, for which the lifting of the stay became effective yesterday, and that's why we're filing; the motion for execution of the judgment today with respect to the penthouse apartment at the Condominium San Geronimo, which is the one apartment that we have access to at the moment.

There is one other situation, Your Honor, that I will remind the Court about. And that is the situation with the Emperor Equities shares. If you may recall, when you entered the judgment and subsequently amended it, you ordered Mrs. Unanue, to file with the registry of the court the shares of Emperor Equities, the shares that she held. As you may remember, she is the 100 percent owner of that corporation, which is the sole owner of apartment 5A at the Condominium San Geronimo. Emperor was not a party to the cause, but Liliane Unanue was the sole owner of that property. She did not comply with that order either. What she did was file a motion advising the Court that the shares

had been lost after the Hurricane Georges in 1998, and because of that, she was not able to comply with the order of the Court.

At that point in time, Your Honor, since she is really the only owner, and the president and secretary of the corporation, what she should have done., and chose not to do, was to issue amended certificates of shares and deposit those with the court. But she did not do that. That is another instance of violation of the court order.

But again, that's not the only one. Your Honor may remember also the situation way back when the complaint was filed, when you ordered her to deposit with the court the proceeds of the sale of the Sutton House apartment in New York City, which were approximately $100,000 coming to her. That order was not complied with. The Court then entered a default by virtue of the fact that they had violated that order, and that's why the - that's one of the reasons that the case was heard without a jury, as a sanction for that particular order.

So we agree with Your Honor that the record is full of examples of violations of orders entered by the Court, and so we understand that the remedy of issuing the arrest warrant is really the only remedy at the moment, Your Honor, and we understand perfectly the situation which brother counsels are in.

THE COURT: Thank you very much. You're now excused. Good luck.

This is to be transcribed.

(End of proceedings.

EXHIBIT
1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

VS.

WARRANT FOR ARREST

ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE

CASE NUMBER: CV. 95-2411 (JAF)

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE
(Name)

and bring him or her forthwith to the nearest magistrate to answer a(n)

[ ] Indictment [ ] Information [ ] Complaint

[ ] Order of court [X] CIVIL CONTEMPT - FAILURE TO APPEAR AT A HEARING. SEE ORDER #331, FILED ON OCTOBER 20, 2000. (ATTACHED)

charging him or her with (brief description of offense)

in violation of Title ____ United States Code, Section(s) ____

JOSE A. FUSTE
Name of Issuing Officer

U.S. DISTRICT JUDGE
Title of Issuing Officer

REBECCA AGOSTINI-VIANA
Signature of Issuing Officer

OCTOBER 31, 2000, HATO REY, PUERTO RICO
Date and Location

Bail fixed at $ NO BAIL

By REBECCA AGOSTINI VIANA
Name of Deputy Clerk

RETURN		
This warrant was received and executed with the arrest of the above-named defendant at ____		
DATE RECEIVED DATE OF ARREST	NAME & TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: ULPIANO UNANUE- CASAL ALIAS: CHARLES UNANUE

LAST KNOWN RESIDENCE: 360 EAST 57TH ST., APT. 12-A, NEW YORK, NY 10017

LAST KNOWN EMPLOYMENT: RETIRED

PLACE OF BIRTH: SAN IUAN, PUERTO RICO

DATE OF BIRTH: 08-22-22

PASSPORT NO. (1985-1993) D1857956 / (1986-1996) G1009755 / (1982-1987) C-966001

SOCIAL SECURITY NUMBER: 720-10-7230

HEIGHT: 5' 10" WEIGHT: 200

SEX: MALE RACE: WHITE

HAIR: BROWN (WHITENING) BALDING EYES: DARK

SCARS, TATTOOS, OTHER DISTINGUISHING MARKS:

FBI NUMBER:

COMPLETE DESCRIPTION OF AUTO:

INVESTIGATIVE AGENCY AND ADDRESS:

Certified to be a true and exact copy of the original.
FRANCES RIOS DE MORAN, CLERK
U.S. District Court for the District of Puerto Rico
By: Deputy Clerk
Date: 10/2/00

ADDITIONAL ADDRESSES

21 BIS, AVENUE D' IENA
PARIS, FRANCE

LA SOLANA DEL RIO
FUENGIROLA
MALAGA, SPAIN

860 ASHFORD AVENUE, APT. 11B or SA
SAN GERONIMO CONDOMINIUM
SAN JUAN, PUERTO RICO

EXHIBIT
G

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

VS.

LILIANE UNANUE

WARRANT FOR ARREST

CASE NUMBER: CV. 95-2411 (JAF)

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest LILIANE UNANUE
(Name)

and bring him or her forthwith to the nearest magistrate to answer a(n)

[ ] Indictment [ ] Information [ ] Complaint

[ ] Order of court [X] CIVIL CONTEMPT - FAILURE TO APPEAR AT A HEARING. SEE ORDER #331. FILED ON OCTOBER 20. 2000. (ATTACHED)

charging him or her with (brief description of offense)

in violation of Title ____ United States Code, Section(s) ____

JOSE A. FUSTE
Name of Issuing Officer

U.S. DISTRICT JUDGE
Title of Issuing Officer

REBECCA AGOSTINI-VIANA
Signature of Issuing Clerk

OCTOBER 31, 2000, HATO REY, PUERTO RICO
Date and Location

Bail fixed at $ NO BAIL

By REBECCA AGOSTINI VIANA
Name of Deputy Clerk

RETURN

This warrant was received and executed with the arrest of the above-named defendant at ____

DATE RECEIVED	NAME & TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: LILIANE UNANUE ALIAS: LILIANE DASKALOVA

LAST KNOWN RESIDENCE: 360 EAST 57TH ST., APT. 12-A, NEW YORK, NY 10017

LAST KNOWN EMPLOYMENT: NOT EMPLOYED

PLACE OF BIRTH: SOFIA, BULGARIA

DATE OF BIRTH: 5-28-28 (PASSPORT SHOWS DATE OF BIRTH 5-28-38)

PASSPORT NO. 111462539

SOCIAL SECURITY NUMBER: 131-62-4046

HEIGHT: 5' 6" WEIGHT: 150

SEX: FEMALE RACE: WHITE

HAIR: BROWN EYES: DARK

SCARS, TATTOOS, OTHER DISTINGUISHING MARKS:

FBI NUMBER:

COMPLETE DESCRIPTION OF AUTO:

INVESTIGATIVE AGENCY AND ADDRESS:

I certify to be a true and exact copy of the original.
FRANCES RIOS DE MORAN, CLERK
U.S. District Court for the District of Puerto Rico
By: Deputy Clerk
Date: 8/3/10

IN THE UNITED 5TATES DISTRICT COURT
FOR THE DISTRICT or PUERTO RICO.

GOYA FOODS, INC.	:	
Plaintiff,	:	
		Civil No. 95-2411(JAF)
v.	:	
ULPIANO UNANUE CASAL, a/k/a CHARLES UNANUE; LILIANE UNANUE, and KALIF TRADING, INC.	:	
Defendants.	:	

WRIT OF EXECUTION

THE UNITED STATES OF AMERICA
THE PRESIDENT OF THE UNITED STATES
THE COMMONWEALTH OF PUERTO RICO

To: The Special Master, Alberto Bacó Bagué, Esq., designated by the United States District Court for the District of Puerto Rico

WHEREAS, it appearing from the records of this Court that a Judgement was entered in favor of plaintiff Goya Foods, Inc. ("Goya") and against defendants Ulpiano Unanue-Casal a/k/a Charles Unanue ("Charles"), Liliane Unanue ("Liliane"') and Kalif Trading, Inc. ("Kalif Trading"), on October 31, 1997 (Docket No. .227), as amended on March 10, 1998 (Docket No. 245) and December 14, 1998 (Docket No. 275) (the "Judgment");

and

WHEREAS, it also appears from the records of this case that defendants have not satisfied any part of the Judgment, or the underlying judgment of the New Jersey Superior Court upon which this Court's Judgment was based; and

WHEREAS, there is no stay in effect which may affect the enforceability and execution of the Judgment, it is hereby:

1. ORDERED that Alberto Baco Bague, Esq. be and is hereby appointed Special Master to proceed forthwith with the public sale of the property located at 860 Ashford Avenue, Apartment 11B (or Penthouse B), San Juan, Puerto [sic], free and clear of all liens and encumbrances, to the highest bidder in order to make effective the Judgment held by Goya.

2. The property to be auctioned is more particularly described in the Spanish language as follows:

PROPIEDAD HORIZONTAL: Apartamento Numero 11-B. Local (penthouse) destinado a vivienda, todo de concreto armado y bloques de concreto, situado en la undecima planta del CONDOMINIO SAN GERONIMO, o sea, el edificio designado con el numero 860 de la Avenida Ashford, en el Sector del Condado, Municipio de San Juan. Tiene una area superficial de 2704 pies cuadrados, equivalentes a 251.00 metros cuadrados. Consta de salita de entrada, salcomedo, cocina, 4 habitaciones para dormitorios, 4 banos, vestidor, cocina, varios closets, corredor y terraza. Su puerta principal que da acceso y su puerta de servicio que da acceso a su corredor, se comunica con el vestibulo donde estan

localizados los ascensores y la escalera de salida al exterior. Colinda por el Norte, en una linea quebrada con patio exterior en una longitud de 56'3" equivalentes a 17.1400 metros; por el Sur, en una linea quebrada cone patio exterior in una longitud de 56'3" equivalentes a 17.1400 metros; por el Oeste con la pared que la separa del apartamento numero 11-A en una longitud de 26' equivalentes a 7.9248 metros con el vestibulo donde estan localizados los ascensores en una longitud de 8' equivalentes a 2.4384 metros con los acensores y el incinerador en una longitud de 20'6" equivaltntes a 6.2484 metros con el vestibulo donde estan localizados los ascensores en una longitud de 4' equivalentes a 1.2192 metros y con pared que las sepra del apartmento numer 11-A en una longitud de 29'6" equivalentes a 9.16 metros; y por el Este, en una linea quebrada con patio exterior a 26.7218 metros.

Le correspone un espacio de estacionamiento en el area designada a tales efectos.

PORCENTAJE: 2.7171% en los elementos comunes generales.

The above described property is registered in the Property Registry, San Juan Par, First Section, Property number 21337, at page 121 of Volume 592 of Santurce North.

3. ORDERED that the Clerk of the Court shall issue a Writ of Execution directign Alberto Bco Bague, Esq., Special Mastero; to make effective the Judgment awarded to Goya, together with the costs of these proceedings, through the sale of the foregoing property at a public sale in the manner set by law for the sale of realty by execution.

4. ORDERED that the public sale shall be held at the Office of the Clerk of this Court.

5. ORDERED that a Notice of said sale shall be published once a week for at least four (4) weeks prior to the date of the sale, in a newspaper having general circulation in the Commonwealth of Puerto Rico.

6. ORDERED that the Special Master shall only accept in payment of the auctioned property, currency of the United States or certified checks. In the event said property is sold and adjudicated to Goya, the amount of the bid made by Goya shall be deducted from the amount owed by defendant Charles Unanue to Goya pursuant tot he Judgment of the Superior Court of New Jersey dated February 23, 1995, and the amount owed by defendants pursuant to the Judgment of this Court, as amended, and only is said bid is greater than the money judgment awarded to Goya shall Goya be required to pay the difference in currency or by certified check.

7. ORDERED that the Special Master may, either Personally or by some person designated by him to act in his name, place or stead, and by his authority, adjourn the sale from time to time, without the need for further publication.

8. ORDERED that upon confirmation of the sale by this Court, the Special Master shall execute and deliver a deed of conveyance of the auctioned property, in the manner prescribed by law.

BY ORDER OF THE HONORABLE JOSE ANTONIO FUSTÉ, Judge of this
Court, given under my hand and seal on this 31st day of October, 2000.

Frances Rios de Morin
Clerk, U.S. District Court
for the District of Puerto Rico

By: _____
Deputy Clerk

12/15 OC

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

RECEIVED & FILED
00 DEC -6 AM 7:52
U.S. DISTRICT COURT
SAN JUAN, P.R.

~~Hoya Foods Inc.~~

VS.

Charle Uranne, etal.

CIVIL NO. 93-2411 (JAF)

DESCRIPTION OF MOTION

DATE FILED: 11/28/00 DOCKET: 339 TITLE: Emergency Motion etc

[ ] Plffs. [X] Defts.

O-R-D-E-R

Denied

12-5-00
DATE

JOSE A. FUSTE
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Goya Foods, Inc.

v

Ulpiano Unanue Casal, et al.

CIVIL CASE: 95-2413 (JAF)

DESCRIPTION OF MOTION

DATE FILED: 12/21/00	DOCKET #: 340	TITLE: MOTION by Liliane Unanue, pro se to Vacate [336-1] order regarding writ of execution and appointment of special master
BY: Defendant		

O-R-D-E-R

Denied

2/21/01
DATE

JOSE A. FUSTE
UNITED STATES DISTRICT JUDGE

United States Court of Appeals
For the First Circuit

No. 01-1214

GOYA FOODS, INC.,
Plaintiff,Appellee
v.
ULPIANO UNANUE-CASEL,
a/k/a CHARLES UNANUE,
Defendant, Appellant.

LILIANE UNANUE and KALIF TRADING, INC.,
Defendants.

No. 01-1585

GOYA FOODS, INC.,
Plaintiff, Appellee
v.
LILIANE UNANUE,
Defendant, Appellant.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
and KALIF TRADING INC.,
Defendants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Jose Antonio Fuste, U.S District Judge]

Before

Boudin, Chief Judge,
Kravitch,* Circuit Judge,
and Lynch, Circuit Judge.

Jan Alan Brady with whom Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein was on brief for defendant Liliane Unanue.

Charles Unanue on brief pro se.

Ira Brad Matetsky, Legal])epartment, Goya Foods, Inc., with whom Arturo J. Garcia-Solá and McConnell Valdés were on brief for plaintiff Goya Foods, Inc.

December 27, 2001

* Of the Eleventh Circuit, sitting by designation.

BOUDIN, Chief Judge. This appeal grows out of efforts by Goya Foods, Inc. ("Goya") to enforce a state court judgment against Charles Unanue and to reach certain of his assets held in the name of other parties including his wife Liliane. Prior history is recounted in Goya Foods, Inc. v. Unanue, 233 F.3d 38 (1st Cir. 2000) ("Goya I"), cert.. denied, 121 S.Ct. 1964 (2001). What follows is a brief history of the background and a summary of events since

Goya I.

In 1987, Goya sued Charles in New Jersey state court for breach of a settlement agreement governing an earlier dispute. While the state court suit was ongoing, Charles filed for bankruptcy in 1990 in Puerto Rico and the bankruptcy estate became a party to the New Jersey litigation. In February 1995, the New Jersey court entered a judgment against both Charles and his estate for $6.9 million. In re Unanue, No. M-128817, slip op. (N.J. Super.Ct. Ch. Div. Feb. 23, 1995). On September 12, 1995, the bankruptcy court dismissed Charles' bankruptcy case without granting him a discharge. In re Unanue-Casal, No. 90-04490, slip op. at 5 (Bankr. D.P.R. Sept. 12, 1995).

In November 1995, after the New Jersey judgment was entered, Goya filed an action in the federal district court in Puerto Rico against Charles, his wife, Liliane, and Kalif Trading (a Panamanian corporation organized by Charles), seeking to enforce the New Jersey judgment against certain assets nominally held by Liliane or Kalif. Included among these assets were cooperative shares in Apartment 10A, at 65 Park Avenue in New York City. Although the shares were titled in Liliane's name, Goya said Charles had paid the purchase price and maintenance fees on the apartment and was the true beneficial owner.

At the outset, Goya moved for provisional remedies to ensure its ability to collect any judgment it might obtain. Goya sought a prohibition on the alienation of certain properties held by Charles, Liliane and Kalif, including the shares in Apartment 10A. The district court granted the request on November 17, 1995. The order reads, in part:

> ORDERED that defendants, their agents, employees, and all persons holding property for

them or acting in concert with them, are prohibited from alienating or in any way assigning, transferring, selling or otherwise disposing or encumbering any of the real properties, including cooperative shares, listed below

. . . .

2. Apartment 10A at Park Avenue, New York, New York, cooperative shares pertaining to which are held in the name of Liliane Unanue.

The court issued a second order, similar to the first, specifically prohibiting alienation of the shares to Apartment 10A. That order reads:

ORDERED that defendant Liliane Unanue, her agents, employees, and all persons holding property for her or acting in concert with her, are prohibited from alienating or in any way assigning, transferring, selling or otherwise disposing or encumbering any of the cooperative shares pertaining to Apartment 10A at Park Avenue, New York, New York, or her ownership interest in the premises represented by such shares.

After denying the Unanues' motions to dismiss the suit for lack of personal jurisdiction the district court held a 10 day bench trial in July 1997 and issued its opinion on October 31, 1997. The court found that Liliane and Kalif Trading were holding properties for Charles and that Goya could execute against those properties. Goya Foods, Inc. v Unanue-Casal, 982 F. Supp. 103, 112 (D.P.R. 1997). It discussed, at some length, Apartment 10A, and ruled that Goya has a right "to execute judgment over . . . any

residence registered to [Liliane's] name . . . . Id. However, the court sua sponte stayed enforcement of the judgment pending Charles' appeal to this court and his appeal of the underlying state court judgment (even though the Unanues were not required to post a bond). Id.

The New Jersey appellate court subsequently affirmed the state judgment and the state supreme court denied further review. In re Unanue, 710 A.2d 1036, 1041 (App. Div.), cert. denied, 724 A.2d 801 (1998). In an opinion issued November 28, 2000, this court affirmed the Puerto Rico judgment, making clear that as to Liliane, the judgment reached only those properties at issue in the case. See Goya Foods, Inc., 233 F.3d at 45-46. The Supreme Court recently denied certiorari. 121 S.Ct. 1964 (2001).

However, in October 20)0, while the appeal of the Puerto Rico district court judgment was still pending before us, Goya discovered that the Unanues had secretly sold Apartment 10A in June 1998 for $4.6 million and had directed that $4.2 million of the sale price--apparently the balance after commissions--be wired to a Swiss bank account in Liliane's name. Goya claims both Charles and Liliane played integral roles in the sale.

When it learned of the sale, Goya filed an ex parte motion, on October 16, 2000, asking the district court for an order directing Charles and Liliane to appear in person and show cause why they should not be held in contempt of court. The court issued the show cause order on October 20, 2000. It reads:

> ORDERED that defendant Charles Unanue a/k/a Ulpiano Unanue Casal and defendant Liliane Unanue each shall APPEAR PERSONALLY BEFORE THIS COURT, together with counsel if they be so

> advised, on the 31st day of October, 2000, at 9:30 a.m. [in the United States Courthouse in Hato Rey, Puerto Rico] and then and there SHOW CAUSE why they should not be held in CONTEMPT OF COURT for their knowing and willful violation of the [November 17, 1995] Orders of this Court, and why the Court should not grant appropriate relief therefor . . .

The court emphasized that Charles and Liliane were to "APPEAR PERSONALLY" in court for the hearing, "such that an appropriate warrant for their arrest and detention shall issue upon their failure to appear as directed." The court also vacated the stay of execution it had placed on its judgment, effective October 27, 2000, unless Charles and Liliane deposited $4.6 million with the court or posted a bond. Further, the court granted Goya's request to conduct discovery regarding the details of the sale of Apartment 10A.

The Unanues were notified of the order on October 24, 2000, at their residence in New York City. Liliane's New Jersey attorney, Jan Brody, was also served with a copy. The Unanues, however, failed to appear at the scheduled hearing; instead, after receiving the show cause order, they apparently left New York for Paris. To this date, they remain fugitives; they have not appeared before the court, nor have they made any effort to pay the underlying judgment.

Two attorneys, whom the Unanues had contacted the day before the hearing, did appear at the hearing. They informed the court they had not yet decided whether to represent the couple and requested additional time to familiarize themselves with the case to make their decision.

The court responded:

> The problem that I have here is that there was an order entered by this court regarding disposition of assets, and the order was violated. We're not talking about the sale of a car; we re talking about the sale of an apartment for over $4 million. It's a major thing, and the papers on record show that these monies were transferred to some account in Europe . . . And under these circumstances, I would have expected the defendants . . . with or without counsel, to appear here today.
>
> This record is full of instances in which these defendants, out of disrespect for orderly proceedings before a court of justice or because of the fact that they were proceeding pro se in many various instances in which they appeared, the truth of the matter is that they have not complied with a number of dispositions. And under these circumstances, the only thing that I find prudent to do is one of two :things. Either forget about it and not enforce the order and just assume that they are incapable of complying and forget about it, simply, or just have them arrested. And I think there are only two alternatives, and the alternative of choice is the order. We're going to enforce orders of this Court and not allow these things to happen in this case, or any other case.
>
> The only other alternative is to order their arrest. So what I will do is this. I will ask the court to issue an arrest warrant against these two individuals. . . .

> There will be no bail, no bail posted, and upon their arrest, these individuals should be transferred to this district, and then I will set a hearing. This will give them the opportunity now of dealing with counsel and hiring local counsel, because the hearing won't be held today. I'm just taking a preventive measure, basically to avoid further flouting of the orders of this Court.

Thereupon, bench warrants were issued for the arrest of the Unanues.

The district court also granted Goya's motions, filed the day of the hearing, to execute judgment against another apartment located in San Juan, and to appoint a special master to conduct the sale of the property. In response, Charles and Liliane filed separate motions seeking to vacate all orders related to the contempt proceedings and execution of the judgment. Charles filed his motion, by mail, from France, on November 25, 2000. The court denied the motion on December 5, 2000, and on December 19, 2000, Charles filed his notice of appeal from that denial.

Liliane filed a similar motion to vacate, again, by mail from Europe, on December 18, 2003, captioned "Emergency Motion To Vacate Order of this Court for Ap[p]ointment of Special Master and To Vacate Warrant for Arrest of Liliane Unanue." The motion asked the court to rescind all orders requested by Goya subsequent to October 15, 2000. The court denied the motion on February 21, 2001, and, on March 19, 2000, Liliane filed a

notice of appeal from the denial.[2]

In their appeals, which have been consolidated, Charles and Liliane make virtually identical arguments. They claim the Puerto Rico federal court lacked subject matter jurisdiction over all proceedings in this case. They also claim the court lacked in personam jurisdiction over them in the original proceeding. As to the contempt hearing, they claim they were given insufficient notice. Lastly, they say that the district judge, who presided over all the matters in this long-running case, prejudged the contempt charge and should have recused himself.

At the outset Goya raises two threshold issues, asking this court to dismiss the appeals for want of a final appealable judgment or under the fugitive disentitlement doctrine. The question which, if any, of the district court's rulings is appealable now presents interesting questions. The Unanues purport to appeal from four or five different "orders" of the district court. But we need not determine which of these orders, if any, is final because we dismiss

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[2] On February 22, 2001, the district court ordered them to hand over the proceeds from the sale of Apartment 10A to Goya or to the court and granted the special master access to the Puerto Rico apartment. Goya also sought contempt sanctions against the buyer of Apartment 10A, the management company, and the apartment cooperative which approved the sale, asserting that these parties were aware that the sale violated the district court's orders prohibiting alienation. After holding a show cause hearing, the district court held the three parties in contempt and ordered them to pay Goya $4.6 million, plus interest and attorneys fees. Goya Foods, Inc. v. Unanue-Casal, No. 386, 2001 WL 505305 (D.P.R. May 4, 2001). An appeal from that decision has been filed.

the Unanues' appeals under the fugitive disentitlement doctrine.

There is substantial precedent for dismissing an appeal by one who has fled, Walsh v. Walsh, 221 F.3d 204, 214 (1st Cir. 2000) (collecting cases), cert. denied, 531 U.S. 1159 (2001), even where the appeal is taken from a :civil judgment.[3] But the doctrine is also discretionary rather than automatic and to be applied with caution. Notably, in Degen, the Supreme Court found that a civil forfeiture suit should not be dismissed merely because the defendant was in flight from a different albeit connected criminal prosecution, and it focused attention on practical considerations particular to the case rather than abstract concerns about court dignity or future deterrence. 517 U.S. at 825-29.

In our own case, several considerations warrant dismissal of the appeals. First, the underlying conduct with which we are concerned is extremely serious. The charge is that, in the teeth of explicit orders prohibiting Charles and Liliane from transferring the shares, both of them connived at violating the orders, enriched themselves by $4.2 million, and then fled the jurisdiction. When instructed to return and defend their actions, they refused to do so. This is not, in short, some garden variety discovery dispute but--so far as appears--blatant defiance of explicit court orders.

Second, the appellants' flight is not from some other

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[3] United States v. Barnette, 129 F.3d 1179, 1186 (11th .Cir. 1997); Empire Blue Cross &Blue Shield v. Finkelstein, 111 F.3d 278, 282 (2d Cir. 1997); see also Degen v. United States, 517 U.S. 820, 823 (1996); Walsh, 221 F.3d at 215.

proceeding, as in Degen, raising the specter that dismissal of the civil appeal is being used to coerce appearance in the criminal case. Here, the flight grows directly out of Goya's effort to enforce its judgment in the civil proceeding which consumed years of litigation; and the appeal is from actions and orders of the district court designed to enforce that very judgment. Indeed, the flight prevents Goya from discovery that might be used to unearth the proceeds of the sale or otherwise enforce its judgment. Empire Blue Cross & Blue Shield, 111 F3d at 282.

Third, on the most practical level, the appeals are themselves little more than devices to frustrate and delay the enforcement of the original judgment. In general, appellants' main arguments are without merit; indeed, several were made unavailingly in the original action and are now clearly barred by the law of the case. Cohen v. Brown Univ., 101 F.3d 155, 167 (1st Cir. 1996), cert. denied, 520 U.S. 1186 (1997). The only effect of the appeals is to raise the cost for Goya of implementing the judgement, to consume the district court's time, and to provide a vehicle for seeking stays which would further delay Goya's recovery if this court were naive enough to grant.. them. See Barnette, 129 F.3d at 1185-86.

Lastly, flight in this instance is unfortunately not some novel and eccentric event but is of a piece with the conduct of the appellants over a lengthy period. Charles' concealment of assets has a long and distressing history, and Liliane has abetted him, inter alia, by making factual claims as to the origin of the assets that were flatly rejected by the district court as false or unsupported. Goya Foods, Inc., 982 F. Supp. at 103. The violation of explicit orders of the court and the flight to avoid the show cause hearing are only the latest in this series of evasions.

The appellants argue against the doctrine but unpersuasively. They say, for example, that Apartment 10A has not left the jurisdiction and that Goya has pursued other parties (e.g., the buyer of the apartment) for identical amounts. But, of course, the shares in Liliane's hands were the least costly means to realize on the apartment's value, see Barnette, 129 F.3d at 1183, and others who benefitted or assisted may have good-faith defenses. And the very cost to Goya of pursuing others, when the shares were subject to an order in favor of Goya, is itself harm. See Walsh, 221 F.3d at 215.

Goya has filed a motion for an award of costs against Liliane Unanue and her counsel (Jan Allen Brody, Esq. and the Carella Byrne firm) in the amount of no less than $7,500. See 28 U.S.C. §§ 1912, 1927; Fed. R. App. P. 38 (if a court determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee). Goya asserts that its actual expenses have been substantially in excess of this amount but seeks at least token compensation for having to file a lengthy brief addressed to arguments, a number of which are clearly frivolous.

Two such arguments serve as examples. The first is the claim that the district court lacked jurisdiction ab initio because the underlying New Jersey state court judgment was not properly validated in Puerto Rico. In particular, the Unanues say the court failed to hold an exequator proceeding, as required under Puerto Rico law. Ex parte Marquez Estrella, 128 D.P.R. 243 (P.R. 1991).

This claim is identical to one made and flatly rejected in Goya I. Our decision in that case states, in no uncertain terms, that the exequator objection does not go to the court's subject matter jurisdiction. Goya I, 233 F.3d at 47.

Further, we held that the Unanues had forfeited the claim because they had not made it in a timely fashion before the district court. Id. at 46. There is no excuse for resurrecting the argument now in an appeal from a subsequent enforcement action.

The Unanues also claim the district judge, who presided over the proceedings from the outset, should have recused himself because he prejudged the contempt charges against them. 28 U.S.C. § 455(a) (1994). As a basis for the claim, they cite the judge's comments at the show cause hearing that "there was an order entered by this court regarding this disposition of assets, and that order was violated." The district judge proceeded to hold that the "record is full of instances in which these defendants, out of disregard for orderly proceedings before a court of justice . . . has not complied with a number of dispositions." The Unanues say these comments, made at the conclusion of the show cause hearing, demonstrate pre-judgment of the contempt charge.

It is well-settled that a judge who expresses preliminary views inside the court, based upon knowledge acquired in court proceedings, is not recusable. Liteky v. United States, 510 U.S. 540, 550-51 (1994); In re Boston Children's First, 244 F.3d 164, 169 n.9 (1st Cir. 2001); United States v. Gordon, 634 F.2d 639, 641 (1st Cir. 1980). This is so plainly settled that the request for recusal is frivolous on the facts of this case. What is more, the request was clearly forfeited; it was never made before the district court and appears, for the first time, in Liliane's brief filed nearly eight months after the show cause hearing was held. United States v. DiPina, 230 F 3d 477, 486 (1st Cir. 2000)

Under these circumstances, we conclude that an award of $7,500 in costs against Jan Alan Brody and the Carella Byrne firm is amply justified in favor of Goya. Normally,

we would not assess even such modest costs based upon the characterization of an individual argument or two, see, Kowalski v. Gagne, 914 F.2d 299, 309 (1st Cir. 1990); but the two examples given are extreme and taken with other attempts to reargue matters previously decided or forfeited or otherwise hopeless appear to us to warrant the modest award in question in this instance. Finch v. Hughes Aircraft Co., 926 F.2d 1574, 1580 (Fed. Cir. 1991); Hill v. Norfolk and Western Ry. Co., 814 F.2d 1192, 1200 (7th Cir. 1987)

Accordingly, it is ordered that the appeals be dismissed based on the fugitive disentitlement doctrine and that Jan Alan Brody and the Carella Byrne firm pay to Goya $7,500 additional costs. The award of additional costs will run only against counsel, there being no indication that Liliane Unanue was either a lawyer or a party to the selection of arguments.

Accordingly, the appeal is dismissed and the motion for costs is granted.

United States Court of Appeals
For the First Circuit

No. 01-1214

GOYA FOODS, INC.,
Plaintiff,Appellee
v.
ULPIANO UNANUE-CASEL,
a/k/a CHARLES UNANUE,
Defendant, Appellant.

LILIANE UNANUE and KALIF TRADING, INC.,
Defendants.

No. 01-1585

GOYA FOODS, INC.,
Plaintiff, Appellee
v.
LILIANE UNANUE,
Defendant, Appellant.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
and KALIF TRADING INC.,
Defendants.

JUDGMENT

Entered: December 27, 2001

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico,

and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows:

The appeal is dismissed and the motion for costs is granted.

By The Court:
RICHARD CUSHING
DONOVAN, Clerk

JULIE GREGG
By:_____
Appeals Attorney

[cc: Jan Brody, Esq., A rturo Garcia-Sola, Esq., Ira Matetsky, Esq., IL Upiano Unanue Casal]

United States Court of Appeals
For the First Circuit

No. 01-1585

GOYA FOODS, INC.,
Plaintiff, Appellee
v.
LILIANE UNANUE,
Defendant, Appellant.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
and KALIF TRADING INC.,
Defendants.

ORDER OF COURT

Before

BOUDIN, Chief Judge
SELYA, KRAVTICH,* LYNCH, LIPEZ, Circuit Judges

Entered: June 4, 2002

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for rehearing en banc having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeals be heard or reheard by the Court en banc,

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* of the Eleventh Circuit, sitting by designation

It is ordered that the petition for rehearing and the suggestion for rehearing en banc, be denied.

By The Court:
RICHARD CUSHING
DONOVAN, Clerk

JANICE M. O'NEIL
By:_____
Chief Deputy Clerk

[cc: Jan Brody, Esq., Arturo Garcia-Sola,] Esq., Beth Webber, Esq., Regan Shulman, Esq., Ira Matetsky, Esq., Ulpiano Unanue Casal, Maria Emilia Pico, Esq., Eva Coben Talel, Esq.,]

United States Court of Appeals
For the First Circuit

No. 01-1214

GOYA FOODS, INC.,
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ULPIANO UNANUE-CASEL,
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ORDER OF COURT

Before

BOUDIN. Chief Judge
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Entered: June 4, 2002

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for rehearing en banc having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeals be heard or reheard by the Court en banc,

It is ordered that the petition for rehearing and the

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* of the Eleventh Circuit, sitting by designation

suggestion for rehearing en banc, be denied.

By The Court:
RICHARD CUSHING
DONOVAN, Clerk
JANICE M. O'NEIL
By:_____
Chief Deputy Clerk

[cc: Jan Brody, Esq., Arturo Garcia-Sola, Esq.,
Ira Matetsky, Esq., Ulpiano Unanue Casal]

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Constitutional Provision:

U.S. Const. amendment V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a present or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offences to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Statute:

28 U.S.C.A. § 455(a):

> Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.